

1666. November 8. CARSE against CARSE.

Dr. Carse having taken a right of annual-rent out of Sir Davind Cuninghams lands, in the names and persons of Mark Carse of Cockpen, and Adam Watt, writer, and a comprising thereafter deduced, in their name, to the behoof of the Doctor, for some arrears of the said annual-rent, not only out of the lands out of which the annual-rent was due, holding blench or feu, but of other lands holding ward, Charles Carse, son and heir to the said Doctor, pursued the said Mark Carse and the heir of Adam Watt to denude themselves of the right of the said lands, conform to a back-bond granted by the said Mark Carse and the said Adam Watt, declaring the trust. In that trust, it was alleged for the defenders, that they were content to denude themselves, they being relieved of all hazard they might incur upon occasion of the said trust, and having that right in their person; and, to that purpose, did offer a disposition, bearing a provision, that the right should be burdened with the relief of wards, marriages, and ministers' stipends, cess, and other such hazards. It was answered, That the said disposition ought not to be clogged with such a provision, which would fright buyers from purchasing the said lands; and the pursuer was necessitated, and had presently an occasion to sell the said lands: And as to the incumbrances and hazards which the defenders should condescend upon, they should be purged: But as to the marriage of Adam Watt's heir, (which was condescended upon), there could be no hazard upon that account, in respect the comprising at the instance of Mark Carse and Adam Watt was the fourth comprising, which did only import a right of reversion, the first comprising, whereupon infetment had followed, carrying the right of property. It was duplied, That if it should appear that the former apprisings are either null or informal, or satisfied, the fourth apprising would carry the right of property, and consequently the marriage.

The Lords found, That the pursuer should accept the disposition with the burden of the said relief; or, in his option, should secure the defenders by a bond with a cautioner, to relieve them.

*Dirleton, No. 43. p. 17.*

1666. December 22. TWEEDDIES against TWEEDDIE.

Umquhile ——— Tweeddie of ——— having disponed his whole estate to his eldest son, at the same time, his son gives a bond to his mother, and her heirs, of 6000 merks. The mother being dead, the other five bairns pursue a declarator of trust against the heir, that this was the bairns' provision, put in the name of the mother, and offer to prove the same by the writer and witnesses inserted. It was answered, That trust was not so proveable, otherwise all rights might be inverted by witnesses, whose testimonies our law hath restricted to £.100. It was answered,

No. 5.

Trustee must  
be kept in-  
domnis.

No. 6.

Presumptions  
of trust hav-  
ing been ad-  
duced, wit-  
nesses were  
admitted in  
corroborat-  
ion.