of Balwill, as a part of the earldom of Argyle, did pursue a removing against George Stirline,—who ALLEGED, That he could not be decerned to remove; because he stood infeft in these said lands by a charter under the great seal, before the Earl's gift of forefaulture and infeftment.

That defence was REPELLED, Because the defender having no gift of these lands, upon the forefaulture, and his charter being only granted by the Exchequer, of course, upon a comprising:

The Lords found, That the King was not *habili modo* denuded of the right of property fallen by the forefaulture; which could only be done by a charter and infeftment upon the forefaulture: and that, notwithstanding it was alleged, that the property belonging to the King, by the forefaulture of the Earl of Argyle, who was superior of these lands; which were comprised from the Earl's vassals, who were never confirmed by the King; the charter under the great seal, granted, before the King was denuded, in favours of the pursuer, was equivalent to a confirmation of the vassal's right.

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1668. *December* 13. MURRAY of PHILIPHAUCH *against* CUNINGHAME and JOHN THOMAS.

MURRAY of Philiphauch having impignorated a silver plate to one Cuninghame, for the sum of £300, by a bond, bearing the particular *species*, with an obligement, that, in case of not-payment at the term, he should have power and liberty to sell the same; he being countable for the superplus, which was more than the sum for which they were impignorated: The said Cuninghame did borrow a greater sum upon the said plate, and did impignorate the same to one John Thomas, merchant in Edinburgh; who being pursued to deliver the plate, upon payment of the first sum borrowed from Cuninghame: It was ALLEGED, That Cuninghame having power to sell, as said is, the defender was not bound to restore the plate, till he was satisfied of the whole sum for which they were impignorated to him.

This allegeance was REPELLED, Unless that it were offered to be proven, that Cuninghame had required his money from the debtor, or charged him for payment, before he did of new impignorate the same to another: For the Lords found, That the said clauses, bearing a liberty to sell and impignorate, could not take effect till the debtor was required, or it was intimated to him, that, in case of not-payment, the goods impignorated should be liquidated and disposed of.

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1668. *December* 16. DOCTOR FORBES *against* ANNA BLAIR.

DOCTOR Forbes having married ——— Edgar, who was provided, by her father, to a portion of 4000 merks; and thereupon having apprised from his wife's brother the lands of Keithick; and pursuing for maills and duties, com-

pearance was made for Anna Blair his mother-in-law, who craved preference, not only for so much as she liferented, and had right to as *terce*, but likewise to the rest of the whole lands, as having right, by a disposition from her son, who was heir, bearing that it was granted for an onerous cause; which she being ordained to condescend upon and instruct, she did produce a bond for 5900 merks, granted by her son for alimenting him and the rest of the children divers years.

This bond was not sustained to be an onerous cause, being posterior to the date of the disposition, and holograph; but the said Anna was ordained to pursue and recover decreet for the aliment, wherein the doctor and his wife might be heard to propone all their defences; and that, notwithstanding that they offered to prove the alimenting of the children, many years before the disposition, which was the cause of the bond.

In this action, there being produced a bond of 600 merks, granted by Edgar the father, who was spouse to the said Anna, to which she was made assignee, as having paid the same; and for which she had got bond from her son for the like sum; and produced the same as the cause of the disposition:

This was SUSTAINED as an onerous cause, notwithstanding it was alleged, that she was vitious intromitter, and liable to the whole debts: For the Lords would not sustain that title to make her liable for any more than what she had truly intromitted with, and had not lawfully expended; the said Anna, being the childrens' mother, and liferenter of the most part of the lands, which were laboured by the father himself when he died.

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1669. *January 5.* The BISHOP of ARGYLE *against* The COMMISSARY of ARGYLE.

THE Bishop of Argyle, pursuing the commissary for a tack-duty of 1000 merks, payable yearly, for the quots of testaments since the pursuer's admission to that bishopric, upon this ground, That the commissary was tacksman to the bishop's predecessor, and liable in payment of so much:

The Lords did sustain the pursuit; notwithstanding it was ALLEGED, That his first tack was expired by the death of the granter; and having no tack from this bishop the pursuer, the defender could be only liable for his intromission; seeing, if he had intromitted with much more than the tack-duty, he would have been liable to the bishop, and could not have defended himself *per tacitam relocationem.* Which the Lords did repel; for the Lords found, That the commissary, having continued his possession, which was as tacksman, and never offering to renounce the same, or to crave any new right from the pursuer, he ought to be liable for the tack-duty, aye and while he offer to renounce his right, that the bishop, or others in his name, might enter to the possession.

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