

four chalders of victual, as being the fifth part, was the valued duty of the teind: It was ALLEGED for the defenders, That, by that same decret of plat produced, there was only decerned to be paid out of the lands of Braid thirty-two bolls victual, which they had been in use to pay to the minister; which being a standing decret, and, by virtue thereof, the defenders having paid no more for all years since now by the space of thirty-six years, it ought not to be taken away summarily, but, by way of reduction, to be intented before the Commissioners for the Valuation of Teinds.

The Lords of Session not being competent judges, this defence was repelled; and decret given, finding that the valued duty of the teind was four chalders of victual as the fifth part of twenty: And the Lords found, That the decret was extracted by an error *in calculo*; and so there needed no reduction: which is hard.

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1669. June 4. WILLIAM BLACK *against* JAMES HAMILTON.

WILLIAM Black, having obtained decret, before the Bailies of Edinburgh, for 180 pounds Scots, for the laying a quantity of copper in the weigh-house of Leith, whereof he was tacksman; in which decret, Hamilton was holden as confessed; and having suspended and intented reduction upon that reason, That the decret was given in absence, when he was north about his lawful affairs; whereas, if he had compeared, he had a good defence, to which he craved to be reponed. The Lords did repone him against the decret, he paying the expenses to the pursuer.

Notwithstanding it was ALLEGED, That he being cited, personally apprehended, and holden as confessed, he could not be reponed, unless he had sufficiently purged his contumacy; which was not done: For as to decreets before inferior judges, where there was a lawful defence competent, and was omitted, and the party holden as confessed, for no compearance:

The Lords found, That the defenders might be reponed *ut supra*: whereas, if he had no defence to elide the libel, they would not have reponed him.

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1669. June 6. THOMAS SOMERVELL *against* The EARL of CARNWATH.

THE Earl of Carnwath being debtor to the said Thomas Somervell in the sum of 2400 merks; and, for his further security, having gotten an assignation to some bonds, he did give a back-ticket to be countable, and to allow the same in the first end of any sums due to him; and, as he informed, did thereafter count and deliver up all the bonds; and did thereafter lend him more monies, and took assignation to two other bonds granted by the Earl: whereupon having charged, he did suspend upon the foresaid back-ticket.

It being ANSWERED, That the back-ticket did instruct that the Earl was then debtor, by bond or otherwise, prior to the ticket; whereas the sums charged

for were due by bonds posterior, or the charger had right from George Fullartoun, after the date of the back-ticket :

It was REPLIED for the Earl, That albeit the assignation made by Fullartoun was posterior, yet the Earl's bond was prior, and was to the behoof of the charger ; the Earl having only trusted Somervell, who did take off the furnishing from any he pleased, (which was the cause of the bond,) without the Earl's knowledge, who did never count with Fullartoun, who could only look upon Somervell as his debtor : And therefore that the charger ought to instruct, otherwise than by the back-ticket, that the Earl was debtor by other bonds than this granted to Fullartoun.

The Lords ordained the cedents, whose bonds were prior to the back-ticket, to be examined upon oath, if their bonds were taken to the behoof of Somervell, seeing he was soon thereafter assigned thereto ; and that the same were granted for March accounts, to the merchants who furnished and delivered the same to Somervell, who is the Earl's tailor.

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1669. *June 11.* COLLINSON *against* MENZIES of BALGOUNIE.

MENZIES of Balgounie having given a bond of provision of 12,000 merks to five of his younger children, payable at the first term after his decease, and bearing an obligation, in case of not payment, that his heirs should infest them in the lands of Balgounie for their security : They did obtain a decret against his grandchild, as representing him, not only for the principal sum, but for the bygone annualrents since their father's decease, upon that ground,—That the defender and his father had continually possessed the lands since the death of the goodsire, who was granter of the bond : Which decret being suspended, and reduction raised upon this reason,—That the suspender was minor the time of the decret, and enormly lesed ; because the bond did bear no annualrent, but only an obligation to infest ; and the most that could have been decerned was the rents of the lands, which ought to have been liquidated by a sentence, and found to have been equivalent to the annualrent of the money :

Notwithstanding whereof, the Lords found the letters orderly proceeded for apprising the lands, for security, both of principal and annualrents ; in regard other creditors were doing diligence, by comprising and adjudication : But withal ordained the charger to prove the worth of the rents of the lands : for which they ordained letters to be directed ; and declared, that if they should not extend to the yearly annualrent, the comprising should be restricted, in so far as the annualrent did exceed the same.

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1669. *June 12.* FORBES and his SPOUSE *against* ANNA BLAIR.

DAVID Edgar, by contract of marriage with Anna Blair, having provided the children of the marriage to 4000 merks ; and in case there should be more than