

one, they deceasing, their portions to acresce to the surviving : Doctor Forbes having married one of the children of that marriage, and thereby having right to a fourth part ; and likewise having right to other 2000 merks, by the decease of two other children ; and thereupon obtained a decreet against the heir and comprised the lands : Anna Blair, her mother, being likewise infest in the said lands upon a disposition from the heir, did pursue reduction of the doctor and his wife's right of comprising, upon this reason,—That, before the decreet, she had accepted of a tack of the lands, bearing this provision, that she might either retain 1000 merks, which was her patrimony, or otherwise pay the tack-duty ; which provision being an acknowledgment that there was no more due to her after the death of two of the children, whose portions had accresced to her, she should not take decreet for any more.

This reason was REPELLED, seeing the provision of the tack did not mention any thing that did accresce by the death of the other children, but was conceived only *ut supra* : Which the Lords did interpret to have been only of her proportion and part, as being one of the four children which were begotten of the marriage.

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1669. June 12. MR PATRICK SWINTOUN *against* The BISHOP of EDINBURGH.

THE said Mr Patrick Swintoun charging the tenants of the parish of Corsemichell for some bygone stipend, conform to a decreet of locality *in anno* 1649 ; compearance was made for the Bishop of Edinburgh, who craved, that, by virtue of the Act of Parliament restoring bishops, he should be preferred to all the teinds which exceeded the minister's stipend, as it was settled before the year of God 1637.

It was ALLEGED for the minister, That, since the late Act of Parliament, restoring bishops to their benefices, as they were before the year 1637, the Bishop of Edinburgh had given him a presentation to the kirk, and the modified stipend and locality thereof ; which must be interpreted of the decreet of plat, *in anno* 1649 ; there never having been any decreet of locality before that time.

The Lords, notwithstanding, preferred the Bishop ; and found, That the presentation not expressing any modification or locality, *in anno* 1649, but being only in general, could not be interpreted otherwise but of such a modification and locality as was due by law before the year 1637. Which may be thought hard.

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1669. June 15. BAILLIE of WALSTOUN *against* ——— SCOT, Spouse to Mr JOHN MUIRHEAD.

MR Henry Scot, father to Muirhead's wife, being debtor, by his bond, to Walstoun in the sum of 500 merks, he did thereupon pursue his daughter, as representing her father, upon this passive title,—That he had acquired some lands