

to himself and daughter in fee, with power to contract debt, dispone or grant wadsets or tacks during his lifetime.

It was ALLEGED, That the said lands were so purchased and provided to the defender before the contracting of Walstoun's debt ; and so could give no ground for a passive title, she not being successor *post contractum debitum*.

The Lords, notwithstanding, did sustain the summons ; not to make her personally liable, as representing her father by that passive title, but only in so far as she had a real right, affected as said is, and had made benefit thereby ; and, therefore, ordained the pursuer to prove that the worth of the lands and rents intromitted with did exceed this sum contained in the bond ; and declared, that the counting for the bygone annualrents, and offering to dispone the lands in favours of the pursuer, she should be liberated ; otherwise she should be liable *in solidum* to creditors. This was done to obviate fraud and circumvention by such conveyances made of purpose to prejudice lawful creditors.

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1669. June 15. ASTHARST, Englishman, *against* ANNA DOUGLAS, LADY BOGHALL.

IN a reduction, pursued at the Lady Boghall's instance, who was relict of Anthony Roswall, for reducing a wadset granted Astharst, *ex capite inhibitionis*, which was served at the instance of Sir John Carstairs, upon a personal bond granted by Roswall before the wadset ;—there being a declarator raised at the defender's instance, to hear and see it found, That the debt was satisfied by Roswall himself, or by Maurice Trent, his cautioner, to whom Roswall had dispomed some lands for his relief ; and it being desired that witnesses might be examined, *ex officio*, anent the said conveyance, of filling up the lady's name in the assignation, notwithstanding of payment of the debt, as said is :—It being ALLEGED, That the assignation, being filled up in the lady's name, could not be taken away but *scripto vel juramento* :

The Lords, notwithstanding, before answer, did ordain Maurice Trent his oath to be taken *primo loco* ; reserving to examine Sir John Carstairs, and James Brown advocate, who was the lady's son-in-law, as they should find cause.

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1669. June 17. ANDREW DOUGLAS, Macer, *against* ALEXANDER CRAWFORD.

MR Thomas Crawford having gotten an infestment of an annualrent, effeiring to 3000 merks, out of a tenement belonging to John Douglas, the pursuer's father, and having given a back bond, bearing, that 900 merks belonged to Andrew Douglas, and that whensoever he should be paid of his 3000 merks, that he should pay the said 900 merks to the said Andrew : there was pursuit intended against Mr Thomas's son, at the instance of Andrew, for the bygone annualrents of the 900 merks, and for denuding of himself of a proportional part of the infestment effeiring thereto.