

The Lords did, notwithstanding, assoilyie the defender, and found, That in this or the like cases, where bonds are registered against any one party who was living, it ought to exoner the tutor from exhibition ; and the liferenter or curators of a minor, succeeding to the tutor, ought to pursue a registration against the heirs of the principal debtor, or any other cautioners who were then living the time of the registration.

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1669. *November 27.*

WILLOX *against* COUTS.

CHRISTIAN Howison being married to David Knolles, burgess of Aberdeen ; after there was a son begotten of the marriage, she did resign, in favours of the husband, a tenement with barn and barn-yard belonging thereto, and in favours of herself in liferent, and the heirs of the marriage ; which failing, to his heirs whatsoever. At which time the husband gave bond, bearing, That for as much as all the means he had was by his wife's virtue, therefore he obliged him and his heirs whatsoever, failing heirs of the marriage, gotten or to be gotten, to pay to his wife, her heirs or assignees, the sum of 500 merks, at the first term after the last of their deceases ; whereupon Dr Willox, executor of the said Christian, did pursue Alexander Coutts, who was heir by progress to the husband, for payment of the 500 merks.

It was ALLEGED, That the defender was not obliged in payment, because the condition of the bond did never exist ; in so far as there was an heir of the marriage who survived the father, and was infest in the same tenement of land ; to whom the defender succeeded, but not to the husband who was obliged by the bond.

It was REPLIED by the pursuers, That the meaning of the bond could not be otherwise interpreted ; but whensoever that tenement of land should fall to the husband's heirs, by the death of the heirs of the marriage, the sum of the bond should be due ; seeing it expressly bears to be payable at the death of the last heirs.

The Lords were much divided about the interpretation, seeing the heir of the marriage did succeed the father ; for, if the defender had been heir to the husband, in that case they found, that undoubtedly the sum would have been due : So it being otherwise, they recommended to the parties to agree.

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1669. *December 2.* ARKINLEYS *against* CAMPBELL of GLENCARRADALE.

In the above mentioned removing, pursued at Arkinley's instance as being infest in his father's estate, which was forefaulted, upon the resignation of Duke Hamilton who was donatar to the forefaulture, against Glencarradale, as possessor of the lands of Auchattan Moglen, which was contained in his seasine :

It was ALLEGED for the defender, That he bruiked by tolerance from Camp-