

1671. *February 22.* COUNTESS of CASSILIS *against* The EARL of ROXBURGH.

THE Countess of Cassilis, besides the provision of her contract of marriage, having gotten a bond from her first husband, the Lord Ker, for infesting her in an annualrent of 10,000 merks out of the lands of Broxmouth, with an obligation to warrant the same free of all burdens whatsoever; and having gotten a charter from my Lord Ker's father, the Earl of Roxburgh, whereupon she was infest,—did pursue a pointing of the ground against the Earl of Roxburgh; as likewise did conclude against him personally, to make payment of the said annualrent for several years bygone.

It was ALLEGED, That the annualrent could not be decerned to be paid but with deduction of the public burdens, conform to the Act of Parliament anent liferenters.

It was ANSWERED, That the bond of provision and infestment did bear an obligation to be free of all burdens; and that the granter's heirs should be liable to the pursuer, as well infest as not infest.

The Lords, notwithstanding, did find the said annualrent liable to public burdens; and that they ought to be deduced yearly: seeing it did not relate to any principal sum; and that it was an additional jointure, without any onerous cause.

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1671. *February 23.* MR STANFIELD, Englishman, *against* WILLIAM HAMILTON of WISHAW and JAMES HAMILTON, Merchant.

IN a declarator, pursued at Stanfield's instance, against Wishaw, to hear and see it found that a ticket, subscribed by him and the said James Hamilton, for the sum of £400 sterling, in July 1667, was truly paid to James Hamilton, who received the money, and for whose use it was borrowed; and therefore the pursuer should be declared free: Which declarator was founded upon many strong presumptions, *viz.* That it wanted witnesses, and all solemnities, and did bear no annualrent, but was made payable upon demand. *2d.* Never any diligence had been done thereupon near by the space of 40 years, until some differences had fallen out betwixt Stanfield and James Hamilton, albeit, these two years bygone, the said James's estate and condition was known to be weak; nor was there any farther surety demanded of them; albeit Stanfield was a stranger, and going several times to England: And that it was offered to be proven, that the ticket was seen retired in James Hamilton's hands; and that Wishaw and he thereafter had made several accounts for great sums of money, and that they had paid in to Stanfield several sums of money, without craving retention, or making mention of this ticket; and that they did of late raise an inhibition against Stanfield, and, by indirect means and contrivances, did study to conceal the same, by giving orders to the messengers, and inserting, in the minute book and register, only Hamilton against Hamilton, without mentioning of Stanfield; whereupon he craved witnesses to be examined *ex officio*.

It was ALLEGED for the defender, That the said ticket, being in his possession,