

they would submit; and, accordingly, they having nominated my Lord Chancellor and the President of the Session; who, after hearing of both parties, did ordain an act to be drawn and passed in the town-council, and to be yearly sworn to at every new election, whereby it was enacted, that no provost should continue in office above two years, but might be put upon the leets after he had continued one year in office. They did interpose their authority to this decret, and, in obedience thereto, the said act was passed in the council; and they did give their oath for observing the same at the next election, whereby there was no decision in the point of law, after so long a debate.

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1673. *June 10.* The LAIRD of CLACKMANNAN *against* MARGARET SYDSERFE, and MR MARK KER, her Husband, for his Interest.

THE said Margaret, and her husband, having obtained decret against Clackmannan for payment of the annualrent of three thousand merks, upon the ground that Mr Darleith, her first husband, by contract of marriage, was obliged to provide her to the annualrent of all sums of money that he should conquest during the marriage, did SUSPEND, upon this reason:—That the decret could not secure to make payment; because, by the bond, Margaret Darleith was fiar of that sum, and her father only liferenter; so that her bond ought either to be reduced, or a declarator intented against the said daughter, and the heir of her father, to hear and see it found, that, notwithstanding that the father had taken that bond in name of his daughter, in fee, yet that could not prejudice his wife of the annualrent thereof, the bond being dated after the contract of marriage.

It was REPLIED, That that decret not being libelled in the terms of a declarator of conquest, but only concluding payment against the debtor, and albeit the children of Darleith, the father, were called, yet none of them compeared, being minors, so that the fee of that sum could not, *hoc ordine*, be taken away from the daughter to whom it was provided.

The Lords, considering the case of a bond taken by a father in name of a child, for their provision, and all portion natural, if that should be interpreted conquest, which bears the right of fee to have been in the person of the defunct when he died; or, if the daughter be prejudged of the liferent of the fee, ought to have relief of the heir,—they did find the letters orderly proceeded against the debtor, against whom the decret was given, wherein both the heir and fiar were called, as being equivalent to a declarator of conquest; but suspended all execution until the fiar and heir were of new cited, as in a double pointing, that the point of conquest being decided in law, and the relief of the debtor and heir might be secured, and the interest of all persons decided by a decret, bearing compearance.

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