

ness, failing of heirs of his own body, provided the return of the monies to them, as the said Archbishop was not bound to serve inhibition: So it had been against reason and gratitude to have done the same; and he never being debtor for the money, but *ab initio*, the same being secured upon the foresaid wadset, it were against all law and conscience to make him liable for any more than what he could recover, he being a naked trustee.

The Lords, having examined witnesses, and taken the Archbishop's oath, who did all declare that the Archbishop was never debtor by bond, and that the monies were lent upon a wadset taken in name of the said Thomas, to whom properly the sum did belong; and that the Archbishop, being only obliged not to consent, was not thereby bound to serve inhibition;—did suspend the letters, and found,—That all he was obliged to do was to communicate the right he had to the back-bond, and return the money in so far as was not affected: and that the narrative of the bond, being a clear mistake, and conceived upon an intention that never took effect, all that could be required was, that the Laird of Kingask should be in as good condition as the Bishop should be himself, who should communicate his right, as said is.

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1673. *December 17.* WILLIAM HAMILTON of WISHAW *against* ANDREW LUNDIE.

IN a declarator, pursued by Hamilton of Wishaw, against Andrew Lundie, to hear and see him found liable for six or seven years' rents of the lands of Forde, upon a discharge subscribed by him to the tenants, bearing a receipt of two years' duty; and therefore that the said Lundie, as tutor, did discharge the said tenants thereof, and of all preceding years since the death of Sir John Brown, with absolute warrandice: Likeas, it being referred to his oath what years he intromitted with, he did depone that all intromissions he had, he did profitably expend the same for the use of his pupil; which was an acknowledgment of his intromission with the whole years libelled.

It was ANSWERED, That the general discharge of all bygones, being subjoined to the particular receipt of two years only, could not infer actual intromission of all these years; and the most it could import was to secure the tenants upon the warrandice, in case they should be troubled. And, as to the oath and quality subjoined, it did not bear intromission with the whole years libelled.

The Lords did find, That the discharge did only import the receipt of two years' duty, and that the oath and deposition, being qualified as said is, did not import actual intromission of the whole years libelled; and, therefore, that the pursuer ought to prove otherwise, the defender's actual intromission with the duties of all years, preceding the two years contained in the discharge.

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1673. *December 18.* WALTER CORBET of TOWCROSE *against* HUGH CORBET of HARDGRAY.

IN a reduction and suspension of a decret, recovered at Towcrose's instance, against Hardgray, as executor nominated by Towcrose's mother, upon this rea-