

who were cited to give their oath, for a certain time, within which they might come in to depone, and return to their own dwelling; yet they never did grant a protection to a pursuer, that he might have *personam standi in judicio*, and follow forth actions at his instance as a free liege.

The Lords, notwithstanding of the answer, did grant a protection until the end of the session.

Page 417.

1674. June 24. PATERSON *against* JOHNSTOUNE Son to the Laird of Lockerbie.

IN a suspension, raised at Johnstoune's instance, who was charged upon a bond of borrowed money, granted by him to Paterson, upon this reason,—That the said bond was granted for bygone maintenance due by his father, who, upon decreets recovered against him for the same, was under caption; and that, by the late proclamation, all maintenance was discharged, except where the bond was given by the heritor, who was debtor: but so it is that the suspender's father, being only debtor, had never given bond; and therefore, as he was free, so his son could not be decerned to make payment:—

It was ANSWERED, albeit this bond was given for maintenance due by the father, against whom several decreets were recovered, which the charger did accept as a sufficient security for payment; and had no more to do with the father; and so it could not fall within the proclamation; and the granter ought to seek his own relief, wherein the charger was not concerned.

The Lords did find the letters orderly proceeded, notwithstanding of the reason; and found, That, having voluntarily given bond in his own name, he ought to fulfil the same; and it did not fall within the case of the act of the council, the father not being distressed.

Page 418.

1674. June 24. HENRY MURRAY of LOCHLEAN *against* SIR WILLIAM MURRAY of AUCHTERTYRE.

IN a pursuit at Lochlean's instance, as assignee by the heirs of Mr John Malloch in and to a back-bond granted to him by Auchtertyre, whereby he was obliged to lead a comprising for his own debt, and the said Malloch, for their security of the sums of money due to them; and in case of sale of the lands, to dispone as much thereof to the said Malloch as would be effeiring to his sum, principal, annualrent, and expenses; as likewise bearing, that he should not dispone without Malloch's consent. Whereupon he craved, that, the comprising being now expired, Auchtertyre should be decerned to dispone to him a full proportion of the said lands, as, Auchtertyre's own sums and his being calculated, would fall to his share.

It was ALLEGED, That the back-bond could not furnish any such action; because, Murray of Buchantie, being the common debtor, against whom several creditors were leading comprising, Auchtertyre took upon him the trust volun-

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