

Then Nicol ALLEGED,—He could do no diligence on the back-bond, because Kennoway died shortly after, and the papers were not delivered to him ; and, when he spoke to Kennoway's relict to denude, she craved payment of the expense her husband was at for leading the said apprising, conform to an express quality and condition in the back-bond.

ANSWERED,—Oppones Nicol's obligation to do all legal and necessary diligence upon the back-bond, so that he should have pursued Kennoway's representatives thereon.

This being reported on the 21st of November thereafter, the Lords found, that Nicol, having accepted an assignation to the back-bond, he, by the quality of his assignation, was bound to have done diligence thereon.

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1679. *November 19.* ALEXANDER ARBUTHNOT, Minister at Arbuthnot, *against* SIR ALEXANDER FALCONER of GLENFARQUHAR.

In the charge, Mr Alexander Arbuthnot, minister at Arbuthnot, against Sir Alexander Falconer of Glenfarquhar, as donatar to the ward of Sybbald of Kair, (*vide* 26th Feb. 1678, *supra*, page 288,) for payment of the stipend due to him forth of these lands :

The Lords having this day advised the minister's oath, they found he had, by his oath, acknowledged he had intromitted with 54 bolls of victual of the rents of the lands of Kair, contained in the bond produced, granted by Robert Arbuthnot, tenant in Kair, to him ; whereof two chalders of victual, two parts meal, and third part bear, of the crops 1675 and 1676, being the years charged for. And find the oath proves the cause of the granting that bond by the said Robert Arbuthnot the tenant, was, because the said minister had granted a tack of the teind of these lands to Harie Guthrie, then possessing *qua* donatar ; and the said Hary had given the said tenant a discharge of his farm : and therefore find Glenfarquhar's reason of compensation against the minister is proven by the minister's oath ; unless the charger will condescend and instruct that Hary Guthrie had a right to the lands, by virtue whereof he might grant a discharge to the tenant, and exclude Sir Alexander Falconer's right ; or that Sir Alexander had uplifted these years' rents himself ; reserving to the minister charger, in case Sir Alexander or Hary Guthrie shall pursue upon the tack, to allege it can have no effect till the said composition of 54 bolls be repaid him ; and ordain Sir Alexander's discharges produced to be allowed *pro tanto*. And, in regard the minister is not clear in his oath as to the prices of the victual, find him liable for the prices thereof, conform to the sheriff's fiars of those years.

Then, by a bill, the minister, among other things, offered to prove, that Hary Guthrie acted as pro-tutor, and was holden and reputed in the country as donatar to the ward. The Lords refused this petition. *Vol. I. Page 64.*