

containing a renunciation of all that his Lady, one of Duke William's daughters, could claim, save only this legacy of Mr Livingston's bond of £1000 sterling, now pursued for ; and the Duke to produce the obligation given by the heirs of line, that they shall relieve the heir of tailyie, also founded on.

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1683. *March 22.* The EARL of TWEEDDALE *against* The TENANTS of PINKY.

THE Earl of Tweeddale charger, against the Tenants of Pinky, reported by Boyne. The Lords found the letters orderly proceeded ; and sustain the Commissaries of Edinburgh their decret ; in respect of the probation, and the Act of Parliament 1633, modifying the teind to the fifth part.

Yet that Act was mainly for heritors and titulars, and not for masters and tenants ; and, though they were really damnified by that low valuation, (the fourth part being the true intrinsic value,) yet they had an ease by the over-running of the mettage of the acres, and were free of the expense they would have been put to in leading away their own teind.

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1680, 1682, and 1683. The EARL of MARISHALL *against* His WADSETTERS and VASSALS.

1680. *February 28.*—IN the Earl of Marishall's improbation against his vassals and wadsetters, it was ALLEGED for one, You cannot crave certification against my rights, because I offer to prove any title you pursue by is apprisings which were bought in by the Earl your brother's means, from whom I got my right, though they were taken in Major George Keith's name as trustee ; and so they must accresce to me in warrandice, *nam jus venditoris accrescit emptori.*

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1680. *June 10.*—The E., as he who hath acquired some comprisings upon that estate, pursues the wadsetters to count and reckon for their intronissions.

ALLEGED,—They cannot be liable, upon the 62d Act of Parl. 1661, to count for the superplus duties over and above the annualrents of the sums contained in their wadsets ; because this Earl's brother, when he was heritor, gave them a discharge thereof, as having counted to him for the same.

REPLIED,—This declaration and discharge of the debtor's cannot prejudice other creditors whose rights this Earl hath now, *ex titulo singulari*, acquired ; but they must account for the superplus, and not keep up their debts as unpaid, to seduce and debar other creditors (who are posterior,) from coming in in their just ranks.

This was taken to interlocutor.

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1682. *March 28.*—The Lords ordained this point to be heard *in præsentia*, Whether or not an apparent heir, acquiring in an expired comprising on his predecessor's estate, and by it calling the wadsetters to count and reckon for the superplus rents, more than pays them their annualrents, on the 62d Act, Parl.

1661, or offering caution during the not requisition; if he, in such a case, ought not to be liable in the requisition; not indeed to infer a universal passive title, but, seeing he seeks benefit of the superintromissions, that at least he may state himself as their formal debtor. It is a certain truth, that an extraneous compriser could not be forced to these terms; but the case of an apparent heir buying in such apprisings is not so favourable. *Vide* this decided 22d March 1683. *Vol. I. Page 181.*

1683. *March 22.*—In the Earl of Marishall's cause against his wadsetters, (28th March 1682;) the Lords, *in præsentia*, found, that whatever apparent heir, as creditor, or singular successor, took the benefit of the 62d Act of Parl. 1661, anent restricting wadsetters to their annualrent, and imputing the superplus *in sortem*, should *ipso facto* make himself liable in the requisition, so as to become personally bound for what should be found resting them, on a count and reckoning, both principal and annualrents.

Which was looked upon as a most just decision.

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1674, 1676, 1682, and 1683. The EARL OF DUNFERMELING against The EARL OF CALENDAR.

1674. *February*.—By a minute of a contract-matrimonial passed betwixt the Earl of Calendar and the Lady Dumferling, grand-mother to the present Earl, amongst other clauses he is obliged, in case there be no heirs procreated of the marriage, to dispose upon the half of the conquest by the advice of the Countess. The words are, The half of the conquest shall be disposed upon as she shall think fit. Dumfermeling, as heir to his grandmother, pursues Calendar to dispoñe the equal half of such lands and sums he condescended on in his summons, *super hoc medio*, that they were conquest *stante matrimonio*, and there was no issue extant of the marriage. ALLEGED for Calendar, that this clause related only to the liferent of that half of the conquest, and not to the fee of it. *Secundo*, That the provision was only conditional, in case of no heirs or issue of the marriage; but so it is, there was a child of the marriage betwixt them: and, albeit the child predeceased the dissolution of the marriage, yet the naked existence of the child purified the condition of the clause.

ANSWERED for Dumfermeling the pursuer, to the 1st,—That the clause behaved to relate to the fee and property, because, by an anterior clause, the liferent of all other conquest already, or to be conquest, is provided to her. So this must superadd and operate more; which can be nothing else but the heritable right.\* To the 2d, Nothing can purify that condition but a child procreated, surviving, and actually existing, heir of the marriage; which was not here. See Dury, 27th January 1630, Trumbull against Colsuresby, and the marginal citations there, from Joannes a Sande, Gudelinus, Matthæus de Afflictis, Hippolitus de Marsiliis, Cardin, Mantica, Bartolus, Suinbourne, and the laws there quoted. See 22d February 1656, Lady Langton against Rollo; *vide infra*, No.

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\* See Vulteijs de Feudis, lib. 1. cap. 7. No. 68, 69, et seq. page 152, et seq. *Vide infra*, [No. 478, Catharine Mitchell, 17th June 1676;] Item, No. 27th June 1676, thir same parties.