

No 82.

1684. *March.* Mr ALEXANDER BIRNIE *against* FRAZER of Techmurie.

LANDS wadset being evicted by my Lord Errol the superior, for the not payment of the feu-duty for years before the wadset, the wadsetter agreed with, and got a great ease from the superior, being his advocate, and thereafter pursued a recourse of warrandice upon the eviction, claiming 2000 merks as the sum agreed to be paid to the superior, and 500 merks for his pains and expenses in agreeing with the superior.

*Alleged* for the defender; That he could be no further liable for eviction, but for the true damage sustained thereby. And had the superior confirmed the wadsetter *gratis*, there could have been no ground of eviction,

*Answered*; There being no abatement given at the agreement, but at the payment, upon personal considerations of services done to the superior, the defender can have no benefit thereby:

THE LORDS found, That the defender could be only liable for the sums truly paid out to the superior by the pursuer, and the expenses he was at, probable by his oath; but there being a part of the composition paid to the superior, they allowed large expenses, and modified 1000 merks instead of 2500 claimed—See PROOF.

*Fol. Dic. v. I. p. 600. Harcarse, (WARRANTICE.) No 1017. p. 288.*

No 83.

1685. *November.* GEORGE GALBREATH *against* Widow GIBB.

A WOMAN having procured a gift of bastardy from the Exchequer, was found liable to pay the bastard's debts *secundum vires*, as an *ultimus hæres*; and the decret being extracted, she procured a gift of the bastard's escheat, who died at the horn, and suspended upon that reason.

THE LORDS found, That the suspender having acquired a right to the goods from the King upon the title of bastardy, and having competed thereon with the creditors, she could not disappoint them, by thereafter acquiring another title to the same goods; and some thought the King was fully denuded by the first gift of bastardy, which *habili modo* conveyed the goods. The woman was allowed the expenses of the escheat.

*Fol. Dic. v. I. p. 601. Harcarse, (BASTARDY.) No 158. p. 35.*

\* \* \* Sir P. Home reports this case :

*December.*—GEORGE GALBREATH, merchant in Edinburgh, as creditor to the deceased James Gib, postmaster, having obtained a decret against Abigail Deans, his relict, as donatar to her husband's bastardy, for payment of the debt; she suspends upon these reasons, That the decret was obtained against