

REPLY,—She had thereafter ratified the bond and debt judicially, *extra præsentiam mariti*, and so could not quarrel the same.

DUPLIED,—The ratification could operate nothing against her, being *super actu ex se illicito*, and intrinsically null; a woman clad with a husband not being a person who could contract debt. This was desired to be heard *in præsentia*.

*MS. folio 52.*

1663. *January 25.* THOMAS BEG *against* SIR THOMAS NICOLSONE.

THOMAS BEG, pursuing Sir Thomas Nicolson of Carnock to pay the sum of contained in his bond to Thomas Beg and Janet Levinston, in conjunct fee, and to the bairns to be gotten of the marriage, in fee; which failyieing, to Thomas and Margaret Begg, bairns of a former marriage; on which bond infeftment follows:

ALLEGED,—This sum cannot be paid to Thomas, because the fee of the sum failyieing of bairns of this marriage, did terminate in his other bairns *nominatim*, whereon infeftment followed; and there behoved to be a renunciation of the infeftment by Beg's bairns, before he could pay the sum *tuto*.

The Lords found the fee of the sum, failyieing of bairns of the marriage, belonged to the father; and that the bairns named in the bond could have no right to it, without they were served heirs of provision to their father; and found their father's discharge sufficient, without renunciation.

*Act. Chalmers. Alt. Norvell.*

*MS. folio 52.*

1663. *January 30.* The BURGH of LINLITHGOW *against* ANDREW BENNET.

THE burgh of Linlithgow, having found Andrew Bennet, inhabitant in Borrowstounesse, within their town, imprisons him, fines him, and takes a bond of him, not to traffic with staple goods; and thereafter charging him to pay the failyie contained in the bond; he suspends, that the bond was extorted from him, and so null, there being no law nor practick warranting burghs royal to take this way to vindicate their own privileges against burghs of barony. CONTENDED, Burgesses of burghs royal, as they had the privileges to arrest any man to find caution *judicio sisti*, &c. for debt owing to themselves, so they had the like privilege to attach men for their own liberties.

The Lords found the reason of suspension relevant, and assigned a day to prove; and so found the way Lithgow had taken not warranted by any Act of Parliament.

*Act. Nisbet.*

*MS. folio 52.*