

is equivalent as if the same had been expressed in the gift. The Lords found, That the king's donatar was not liable to the payment of the bastard's debts or legacies, unless the same were so conceived in the gift, or the donatar had given back-bond to do the same. But, in regard that this was a pious legacy, they would inquire what was the Treasurer's meaning and custom of the Exchequer in such cases.

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1664. *November 17.* The TREASURER of PAUL'S WORK *against* HARY HOPE'S DEBTORS.

HARY Hope being debtor to Paul's Work in the sum of £200, and he being fugitive for debt, there were arrestments raised in the hands of several of his debtors, at the instance of the treasurer of Paul's Work. The summons being called, there was compearance made for Mr John Harper, who had got a disposition from Hary Hope, for onerous causes, of the sums craved to be made forthcoming. It was alleged for the arrester, That the disposition fell under the statute of divorce, being *omnium bonorum*; and to a confident person, his own brother-in-law; to whom he could not make a voluntary payment, in prejudice of his lawful creditors, after having charged the debtor with horning. To which it was answered by the assignee, That his assignation was for true and onerous causes, and that he was willing to depon thereupon. The Lords, before answer, ordained Mr John Harper to produce such writs as he had, and bond granted by Hary Hope to him, for instructing the cause onerous of the disposition granted to him.

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1664. *November 18.* WALTER GUTHRIE *against* SHAW of SORNBEGG.

In competition of two rights of wadset of the lands of Threelandhill, betwixt Walter Guthrie and Shaw of Sornbegg, the Lords found that Scot's wadset, assigned to Sornbegg, was extinct by his intromissions, and therefore preferred Guthrie to the possession of the lands and tenements for his 5000 merks; and ordained him to be countable, for the superplus more than the annualrent of his money, to Sornbegg, without prejudice to him or any other right he had, conform to his contract of wadset.

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1664. *November 19.* WILLIAM MOFFET and his SPOUSE *against* ROBERT KER, her Son.

WILLIAM Moffet and his spouse, as creditors to umquhile Sir James Ker of Creillinhall, in the sum of 2000 merks, pursues Robert Ker, his son, as

lawfully charged to enter heir, and upon the rest of the passive titles ; in which process there was an act of litiscontestation the last session ; and, at the time of the dispute, the pursuer having insisted, That the defender had intromitted with his unquhile father's moveable goods, and the duties of the lands of Corsecrasing ; it was alleged *absolvitor* from the passive titles ; because, denying any intromission, if he any had, was as singular successor, by virtue of a disposition flowing from this Laird of Balmerinoch, whose father was infeft in the said lands ; and, as to the other member, Absolvitor, because the deceased Sir James Ker died rebel, and his escheat gifted to unquhile Andrew Rutherford, and declared, and thereafter disposed in favours of the defender. The Lords found these two defences relevant *scripto*, and assigned the 1st of November to the defender to prove, and the same day to the pursuer to prove his intromission. The defender having proven sufficiently his two allegiances, by production of the writs ; the pursuer referring his libel to Robert Ker, the defender, his oath, he did depone *negativè* ; and therefore [was] assoilyed from the pursuit : notwithstanding it was alleged by the pursuer, That he behoved to be liable, in regard he had intromitted with the maills and duties of the lands, before any right he had from Balmerinoch. Which the Lords found not relevant, and therefore assoilyed, as said is.

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1664. November 23. The LADY KNAPPERNAY *against* SIR ROBERT FERQUHAR and the TENANTS of the same.

JEAN Thomson, Lady Knappernay, being infeft in the lands and miln of Tulliemald and Knappernay, pursues Sir Robert Ferquhar, and the tenants and possessors of the same, for maills and duties for several years bygone, and in time coming. It was alleged for Sir Robert, Because he possessed the said lands by virtue of a wadset right, flowing from the pursuer's husband, in which the pursuer had consented. It was replied, That any right the defender had was discharged, in so far as, by a ticket under his hand, he declared, that, notwithstanding he stood infeft in the said lands, yet there was nothing resting to him by the defender's husband but what was contained in a particular account, subscribed by Knappernay ; upon payment whereof, Sir Robert was obliged to denude himself of all right he had to the foresaid lands. Likeas, immediately thereafter, *in anno* 1641, Knappernay did enter to the possession, which he and his relict, the pursuer, did continue till the year 1655, that she was put from [it] by a decret surreptitiously purchased against her tenants, to which she was not called, and whereof she has reduction depending, As also, *in anno* 1643, Knappernay gave bond to Sir Robert Ferquhar for the sum of £1390, which he acknowledged him to be resting, after just count and reckoning ; and which sum was satisfied, and bond retired, and Knappernay's subscription taken from it, which is extant to be seen. The Lords, before answer, ordained both parties to produce their subscribed accounts, and to give their oaths upon the having thereof ; and Sir Robert to depone upon the double thereof, and to produce the contract of wadset, with the retired bond granted by Knappernay to Sir Robert for the sum of £1390, after count and reckoning. Thereafter it was declared in whose hands the subscribed account was presumed