

1664. *November 24.* The LAIRD of WOLMET and MAJOR BIGGAR *against* The LAIRD of SWINTOUN and the EARL of LAUDERDALE.

IN an action of reduction of a certification obtained at the Laird of Swintoun's instance, against the Laird of Wolmet and Major Biggar, before the usurpers, but lay over till the year 1665, at which time the summons being wakened against Swintoun;—the Earl of Lauderdale was likewise called, who was come in Swintoun's place, being reponed against his forefaulture; whereof Swintoun had gotten the gift from the usurpers, and so had right to the lordship of Musselburgh, whereof the lands of Wolmet held feu. It was alleged for the Earl of Lauderdale, That the summons against him ought to be continued. The Lords sustained process, and found no necessity to Major Biggar to continue the wakening against the Earl of Lauderdale; in regard the principal summons of reduction was executed in the usurper's time against Swintoun, according to the form then in use, in whose person the right of the certification then stood; and that Lauderdale was now only called for his interest, in respect of his super-venient right.

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1664. *November 25.* JEAN WATT *against* ROBERT RUSSEL and OTHERS.

JEAN Watt, being infest in the lands of Bogehead and Whiteside, conform to her contract of marriage with umquhile Thomas Hamiltoun, her husband, did obtain a decret, before the Lords, against the tenants; and thereupon having charged Robert Russell, one of the tenants, [he] suspends upon this reason, That the said Robert Russell, being a creditor to the said umquhile Thomas Hamiltoun, and having apprised from the said Thomas Hamiltoun his son, as lawfully charged to enter heir to him, the said lands of Bogehead and Whiteside, and all rights that he can pretend thereto; upon which apprising the said Robert stands publicly infest; and that the benefit of any provision, conceived in the contract of marriage, in favours of Thomas Hamilton, the heir of the marriage, now his debtor, must belong to him, having apprised the same: so that the charger, Jean Watt, being thereby restricted to 600 merks, the superplus being provided to the child of the marriage; the letters must be found orderly proceeded for the 600 merks, and suspended for the superplus. To which it was answered, That the clause of provision in the foresaid contract is only in case there be children alive of the marriage; *quo casu*, the said Jean is made liable to entertain them, during her viduity, upon her jointure, they not being otherwise provided; and, in case she should marry a second husband, the said children being alive, then and in that case her conjunct infestment was to be restricted to 600 merks during the said second marriage, and the superplus to be for alimending the children of the first marriage: which being alimentary, and any of the children alive, can never be taken from them by any of the fathers, intromitters; it being clear, by the contract, that not only the whole lands of Bogehead and Whiteside are secured to the children, but also, that any restriction of her liferent right is