

their several rights, for any debts, provisions, or other obligations whereby William obliged himself to them; only excludes all defences that may be proponed *contra statum personæ*.

*Act.* Ja. Chalmers. *Alt.* Sir Geo. Lockhart, Mr. David Thoirs.

*Signet MS. No. 93, folio 34.*

1664. *January 21.* THOMAS NOBLE *against* JAMES HALIBURTON.

IN 1662 Thomas Noble, merchant in Edinburgh, is infest in a tenement of land, lying in Tailfor's close, once belonging to Patrick Wood, merchant there. This seasine is under the subscription of Sir William Thomson, town clerk, and notary thereto. Then he comprises the same from George Hadden, writer in Edinburgh, and is again infest upon his comprising. Then summons James Haliburton, writer in Edinburgh, as the occupier and possessor thereof, to pay to him, as having right foresaid, the sum of 200 merks yearly, as being that which the tenement pays of maill, before the bailies of Edinburgh. James advocates the same to the Lords. At the calling of the advocation, there is produced for the raiser of the advocation, a comprising of the same lands led at his instance, whereby he claimed right to the maills and duties thereof. Then compears Margaret Hill, relict of Robert Darling in Queensferry, and craves to be admitted for her interest; who being admitted, produces a bond of corroboration granted by George Hadden, to her and her husband, in conjunct-fee, the longest liver of them two, in 1653, whereby he obliges him to infest them and the heirs of their body in the said tenement, redeemable always upon payment of 1200 merks, containing a precept of seasing and procuratory of resignation; whereupon resignation being made in the hands of Robert Sandilands, then one of the bailies of Edinburgh, new infestment was granted to her and her children thereof, as the instruments of seasine and resignation produced also testify; in respect of which writs produced, she craved to be preferred to the whole duties of the said tenement, and to exclude all others, ay and while she be completely paid.

Whereunto it was REPLIED for the pursuer, that he having apprised the said tenement, and so being a singular successor; and her seasine being only on a bond of corroboration of a former simple bond, it can be no farther extended than to the security of the principal sum of 1200 merks, and payment of the annual-rents; and so she ought to be restricted to her ordinary annual-rent.

All which the Lords having considered, they restricted her to the annual-rent of her money, (being liferentrix) and preferred her therein to the other two, to uplift the same, free of all burden. Then *secundo loco*, prefer the pursuer, Thomas Noble, to a proportional part of the superplus of the maills and duties of the said tenement; and, therefore, ordain the said Ja. Halyburton to obey them therein. Yet, because the said Ja. comprised the said tenement within year and day of the pursuer, ordain him to come in *pari passu* with the pursuer to the said superplus of the maills and duties of the said tenement, effeiring to his sum comprised for; and so declare him to have just ground of retention in his own hands, of the proportional part of the superplus, &c. he always paying his proportional part of the pursuer's expenses in leading the said apprising.

*Act.* Pat. Fraser.

*Alt.* Jo. Abernethie.

*Signet MS. No. 94, folio 34.*