

of bygone pensions, due to him by the Laird of Grant, did SUSPEND, upon this reason :—That the bond was affected with a condition, That, in case he should offer a discharge of the pension to Grant's curators, and in case of refusal to return the same before a certain day, he should be liberated ; and accordingly subsumed, that, within a month after the day, he did return the same ; and gave that reason, That the charger had no written pension of the Laird of Grant ; without which the curators could not allow the same.

The Lords, notwithstanding, found the letters orderly proceeded for the principal sum ; seeing he did not instruct any diligence, that he had offered the same to the curators *debito tempore* ; and that Grant himself, by a letter, did acknowledge the service ; and that the pension had been paid by his father many years ; and that the service and employment had been continued : but they suspended for the annualrent, in respect the tutor could get no relief of Grant and his curators.

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1669. July 7. ROBERT RAIT *against* The CREDITORS of ALEXANDER IRVING.

THE said Robert Rait having bought from Irving the lands of Swattoun, and given bond for the price thereof, with a provision, That he might retain as much as would satisfy all real burdens, and as much as would establish a right in his person ; which price was arrested by Irving's creditors ; and likewise some of them, having assignations, did charge for payment : The said Rait did suspend upon double pointing ; wherein, there being a count and reckoning, he did crave allowance of his disbursements, and raising of suspension, and for his attendance and discussing thereof, and of what he had given to advocates and clerks, extending to about £300 ; which he craved the creditors to allow, as Irving himself would be obliged, if he were pursuing.

The Lords finding that the suspender might have consigned the money, and have been free of annualrent, and all considerable charges,—they only modified the sum of £50 to be detained from the creditors ; and found, that they were not in a like condition liable as Irving would have been, if he had been pursuing.

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1669. July 8.

SHAW *against* SHAW.

IN a reduction of a bond, made by William Shaw to his uncle, and assigned to Robert Shaw ; whereupon he had led a comprising for the sum of £20,000 : The production being satisfied, the pursuer offered to improve the bond ; whereupon an act was extracted and witnesses cited : But, fearing that the witnesses would not prove that the bond was false and feigned, the pursuer craved to be reponed, that she might insist upon the reasons of reduction : Whereupon it was debated amongst the Lords, if, in law and form of process, she might be re-

poned, seeing *exceptio falsi est ultima* ; and the alleger of falsehood succumbing in the probation, can never thereafter be heard :—And on the other part, it was ALLEGED, That she being a woman, and her procurators not having libelled an improbation, but a naked reduction, and only proponing the exception of falsehood against the production, it was hard to prejudge her of the benefit of reduction.

The Lords, before answer, ordained them to be heard on the reasons of reduction.

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1669. July 10. SOMERVELL *against* The EARL of CARNWATH.

IN this action, before-mentioned, Fullartoun having been examined, did declare, That the bond granted him by the Earl of Carnwath, was to the behoof of Somervell ; and that accordingly he did assign the same :—Whereupon the Lords finding that bond to be prior to the back-bond granted by Somervell to the Earl, they inclined to discern that it was one of the bonds for which the Earl gave an assignation ; unless Somervell would make it appear, and condescend upon other bonds due by the Earl, for which he granted a back-bond. But he condescending upon a bond of £100 sterling, which he alleged that he had delivered up to the Earl, when he got the assignation ; They ordained, before answer, that he should prove, by the writer and witnesses, that there was such a bond ; or, by the Earl-Chamberlain's, or his own oath, that it was delivered up.

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1669. July 10. REID and GLASS *against* CUNNINGHAM of ENTERKIN.

IN a double pointing against the tenants of some lands, belonging to the Earl of Loudon ; Enterkin craving preference, as being infest in an annualrent prior to the wadset granted to William Reid, and possession conform :—It was ALLEGED for the wadsetter, That he ought to be preferred, because Enterkin had accepted of a factory from him, as having a valid right to the lands ; and obliged himself to uplift the duties for his use, without any reservation of his annualrent.

The Lords did SUSTAIN the allegiance, and preferred the wadsetter ; notwithstanding it was answered, that he, having a real infestment and possession, needed not reserve the same.

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