

*versum.* DUPLIED,—It is *pactum merè personale*, and so *non egreditur personam* of Sir James, *per l. 7, § 8. D. de Pact.*; and the son John being then an infant *in familia*, no father would grant a security for what debts the child should then contract, seeing he knew not but he might be riotous; and the *ratio S. C. Macedoniani* obviates this: and, *esto* it had been for a debt of Sir James's, yet, that being innovated and extinct by this new bond, it cannot be a security for it; and if it should be a security for Forrester's cautionries for the son, why not for the grandchild also, *et sic in infinitum?*

The Lords found the back-bond taxative only for Forrester's cautionries for Sir James the father; and therefore preferred the other creditors to Cokburn in this sum. *Vol. I. Page 493.*

1688. *January 25.* The EARL of BREADALBINE, and JOHN CAMPBELL, his Son, *against* SINCLAIR of DUNBAITH and DUMBAR of HEMPRIGS.

See the prior part of the Report of this case, Dictionary, p. 10,522.

SINCLAIR of Dunbaith and Dumbar of Hemprigs being, on the 22d July last, found liable in a spuilie of some horses, pursued by Mr John Campbell; Dunbaith gives in a bill, signifying that these horses were pointed on Hemprigs' horning; and that, on his own horning, some cows were only pointed. Which was sustained, because they were not proven to have belonged to Mr John, as the horses were; nor had Mr John offered to depone thereanent at the market-cross, as he did for the horses; and therefore craving he may be assoilyied from the spuilie, and the same *in solidum* decerned against Hemprigs. ANSWERED,—*Quoad* Mr John, they must be both liable; because, he having convened both, they did not propone partial defences, but each *suscepit in se litem*, and stated himself contradictory; and an act of litiscontestation is a judicial novation and transaction. And, *quoad* Hemprigs, Dunbaith must also be liable, for he assisted him in the pointing of these horses, the illegality whereof consisted in thir two:—*1mo*, That it was done in the night, or in the morning early, before sun-rising, with violent breaking up of the stable-doors. *2do*, They refused to take Mr John's oath at the market-cross, and Dunbaith was present, and accessory to both, and got the best of the horses.

The Lords found them both liable to Mr John. *Vol. I. Page 494.*

1687 and 1688. JOHN HAY *against* The COUNTESS of HOME.

1687. *December 14.*—JOHN Hay, son to Mr Thomas Hay Clerk, having an infetment from the late Earl of Home upon the Hirsle, craved, by a bill, that the Lords would appoint padlocks to be put upon the barns and barn-yards, that the corns might not be removed and embezzled. The Countess, his relict,

ANSWERED,—She had right, both as donatar to his escheat and as executrix-creditrix.

The Lords refused his bill *hoc loco*, seeing he might point. *Vide* 26th Jan. 1688. *Vol. I. Page 490.*

1688. *January 26.*—At Privy Council, the Countess Dowager of Home pursues Renton of Billie, Sheriff-depute of the Merse, for oppression, in granting a summary warrant to break up her barn-doors, that John Hay, a creditor infest, might point. Whereas, *1mo*, He refused to give up the libel to see. *2do*, John Hay had applied to the Lords for a sequestration of the rents, and was refused, *ut supra*, 14th December 1687. *3tio*, There was a suspension of multiplepointing by the tenants depending, and the Lady had both the gift of her husband's escheat and was executor-creditor to him on her contract; and therefore craved he might be punished, conform to the 26th Act of Parliament 1469, and other laws, for his abusing the King's authority (by which he should protect the lieges) to the oppressing of them. ANSWERED,—The point of right ought first to be discussed and remitted to the Session; and John Hay is a preferable creditor to her; and the Sheriff may assist any who implore his aid; and the Lords of Session only declined to meddle with it, as being *mixti imperii*. The Privy Council sustained the libel, and named a committee for examining the witnesses.

And, on the 19th of February, it being advised, the Lords ordained the Lady to be repossessed; but withal appointed her to find caution to refund, if John Hay prevailed in discussing the suspension. But afterwards they took off the necessity of her finding caution, and waved that point about the Sheriff-depute's carriage. *Vol. I. Page 494.*

1688. *February 1.* CROMARTY'S CREDITORS *against* TARBET.

THE case of the Creditors of Cromarty and Tarbet was debated; wherein it was contended, that the roup of a part of the lands upon the 17th Act 1681 is prejudicial to the sale of the rest; because, by this course, a parcel of the best land might be picked out, which would make all the rest sell, and so the rest shall not be got sold.

Yet the Lords found it might be sold in whole or in part as occasions offered; and sustained the partial roup. *Vol. I. Page 495.*

1686 and 1688. SIR ROBERT SINCLAIR of STEVENSON, and COLONEL ADAM RAE, *against* SIR JAMES SINCLAIR of KINNAIRD.

1686. *January 27.*—Sir Robert Sinclair of Stevenson, and Lieutenant-Colonel Rae, his trustee, pursue Sir James Sinclair of Kinnaird, as heir to Mr