

ceased by the dissolution of the marriage, the heir-male who succeeded to the lands, and got the benefit of these reparations, ought to be liable for the same, and not he,—the debt not being constituted against him during the marriage. The Lords considering he had an annuity out of the estate, and so was *lucratus*, they found him *primo loco* liable; reserving his recourse against the Earl of Home, now the heir-male, to whom it eventually proved to be *in rem versum*; for they thought the merchant not obliged to consider his separate distinct interest from the Lady, and to what use the timber was applied; which could not be instructed, he being now dead, whose oath could have cleared whose faith he had followed, if it had been sought in his lifetime. *Vol. I. Page 598.*

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1694. *January 26.* DAVID GORDON *against* URQUHART of MELDRUM.

PRESMENNAN reported David Gordon, son to Mr Thomas Gordon, against Urquhart of Meldrum, on a bond of pension bearing to be payable during Mr Thomas's life. ALLEGED,—It was a mandate, and expired with Meldrum; and he did no service after. ANSWERED,—It was for bygone services as well as to come; which had been often sustained:—as *3d December 1661, Jamison against M'Leod*; and in *Sir John Nisbet of Dirleton's case against the Earl of Galloway*, and *Pitmedden's against the Earl of Winton*, even after they were Judges. The Lords sustained the bond, conform to its tenor; and would not restrict it. *Vol. I. Page 598.*

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1694. *January 26.* DAVIDSON of BALNACRAIG *against* ALEXANDER LINDSAY.

THE Lords found these words of the partial receipt, declaring it was in part payment of a greater sum, behoved to be ascribed in payment of the bond *primo loco*, and of the tack-duty only in the next place: because the victual in the receipt was liquidated at a far greater price than the victual was modified to in the tack; and if the creditor had been asked, at the time, in payment of which of the two sums he took it, he would certainly have answered for the bond; because he had none bound in it but this bankrupt tenant; whereas, in the tack, he had a cautioner; though a debt due with a cautioner is *durior sors* (to which law commonly ascribes it,) than a debt without one. *Vol. I. Page 598.*

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1688 and 1694. AYTON of INCHDERNY *against* ALEXANDER NAPIER.

[See the prior, intermediate, and posterior parts of the report of this Case, Dictionary, pages 12,609 and 11,479.]

1688. *January 13.*—THE case of Ayton of Inchdernity and Alexander Napier, mentioned 11th December 1686, was debated upon a new point,—If a re-