

PACTUM DE NON PETENDO.

1624. March 20.

JOHN MAKIESON *against* JOHN RAMSAY.

No 1.

JOHN MAKIESON being pursued by John Ramsay, Prior Letham, for payment of 500 merks, excepted upon a promise of Mr Simon Ramsay's, (who was donatar to John Ramsay's escheat), never to seek it of him. *Replied*, That the donatar had put the pursuer in his own place again.—THE LORDS sustained the charge, because they thought that he being reponed, could not be prejudged by any promise of his donatar.

Fol. Dic. v. 2. p. 18. Spottiswood, (PROMISE.) p. 248.

M'MATH *against* MONTEITH.

No 2.

THERE being a bond granted by the deceased James Nisbet, William and James Arnots, all conjunct principals, to Gilbert Gourlay, for a sum of money, whereupon Gilbert comprises the said James Nisbet's lands; thereafter the said Gilbert assigns the debt and comprising to the deceased Sir William Nisbet, brother to James, with an express condition, That he should use no execution against the two Arnots; and Sir William transfers his right to William Monteith of Egilshaw, upon the same condition, who disposes the same to William Monteith, his son-in-law, who enjoys the land by virtue of the said comprising, being now long expired. Elizabeth M'Math being executrix to the deceased William M'Math, her father, and who gets a decret *cognitionis causa* against the apparent heir of the said umquhile James Nisbet, and adjudges the said land; and upon the said adjudication, with concurrence of her husband, Mr John Anderson, pursues a reduction of the said Monteith's right, upon diverse reasons, specially, That the assignation granted by Gourlay to Sir William Nisbet, and the translation granted by him to Monteith, both contain the said provision,

A creditor, in assigning a bond, granted by diverse *correi*, may provide that the assignee is not to use execution against some of them; but this hinders not the assignee to seek the full debt from the rest, nor does it liberate the *correi*, in whose favour it was made, from a proportional relief.