

pearance was made for Anna Blair his mother-in-law, who craved preference, not only for so much as she liferented, and had right to as *terce*, but likewise to the rest of the whole lands, as having right, by a disposition from her son, who was heir, bearing that it was granted for an onerous cause; which she being ordained to condescend upon and instruct, she did produce a bond for 5900 merks, granted by her son for alimentering him and the rest of the children divers years.

This bond was not sustained to be an onerous cause, being posterior to the date of the disposition, and holograph; but the said Anna was ordained to pursue and recover decret for the aliment, wherein the doctor and his wife might be heard to propone all their defences; and that, notwithstanding that they offered to prove the alimentering of the children, many years before the disposition, which was the cause of the bond.

In this action, there being produced a bond of 600 merks, granted by Edgar the father, who was spouse to the said Anna, to which she was made assignee, as having paid the same; and for which she had got bond from her son for the like sum; and produced the same as the cause of the disposition:

This was SUSTAINED as an onerous cause, notwithstanding it was alleged, that she was vitious intronitter, and liable to the whole debts: For the Lords would not sustain that title to make her liable for any more than what she had truly intronitted with, and had not lawfully expended; the said Anna, being the childrens' mother, and liferenter of the most part of the lands, which were laboured by the father himself when he died.

*Page 22.*

1669. *January 5.* The BISHOP of ARGYLE *against* The COMMISSARY of ARGYLE.

THE Bishop of Argyle, pursuing the commissary for a tack-duty of 1000 merks, payable yearly, for the quots of testaments since the pursuer's admission to that bishopric, upon this ground, That the commissary was tacksman to the bishop's predecessor, and liable in payment of so much:

The Lords did sustain the pursuit; notwithstanding it was ALLEGED, That his first tack was expired by the death of the granter; and having no tack from this bishop the pursuer, the defender could be only liable for his intronission; seeing, if he had intronitted with much more than the tack-duty, he would have been liable to the bishop, and could not have defended himself *per tacitam relocationem*. Which the Lords did repel; for the Lords found, That the commissary, having continued his possession, which was as tacksman, and never offering to renounce the same, or to crave any new right from the pursuer, he ought to be liable for the tack-duty, aye and while he offer to renounce his right, that the bishop, or others in his name, might enter to the possession.

*Page 26.*