

1670. *June* —. MR WALTER BRUCE, Minister, *against* MENZIES of ROTMELL.

ALEXANDER Menzies of Rotmell being obliged, by contract of marriage, to pay the sum of 2500 merks, in name of tocher, with his daughter, to the said Mr Walter; long thereafter he did provide the fee of his estate to his eldest son Robert, by his contract of marriage; at which time the said Robert gave bond, wherein he was obliged, that, in case his father should be distressed for any debt prior to his contract, in that case he should become cautioner for him to the creditor; or otherwise, if they should borrow money for payment of the debt, that he should be obliged as cautioner for the same: upon which bond, Mr Walter having pursued Robert for payment of his tocher;—

It was ALLEGED, That, by the conception of the bond, he was only to grant new security, as cautioner for his father; which never having been done in his father's time, who should have been principal, and of whom he might have gotten relief, the bond, whereupon the libel was founded, was not obligatory.

The Lords, notwithstanding, did sustain the pursuit upon the bond; especially it being instructed, by letters of horning produced, that the father was distressed in his own lifetime; which was sufficient to make the son liable according to the tenor of the bond: Seeing, if the son had been pursued during the lifetime of the father, he would have been necessitated to grant bond as cautioner; albeit the father had refused to grant a new bond; and the death of the father could not alter the case.

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1670. *June 15.* WALTER STEWART *against* ROBERT GRAHAM.

In a reduction of a disposition of the lands of Hiltoun, pursued at Walter Stewart's instance, as creditor to William Graham, as being assignee to a bond of 1000 merks, long before the disposition, upon this reason,—That the disposition was made *in fraudem creditorum*, and fell within the Act of Parliament 1621, as being *inter conjunctas personas*; the lands being disposed by a contract of marriage, bearing for love and favour, and that the defender had married William Graham's wife's niece:

It was ANSWERED for the defender, That the right of the lands, being made in contemplation of marriage, and that, by the contract, he had obliged himself for a provision to the children, and a competent provision to his wife, could not fall within the Act of Parliament.

The Lords, having considered the contract of marriage, whereby the defender was only obliged to employ 5000 merks, which he declared he was then worth in goods and merchandise, did incline to find the reason of the reduction relevant, in so far as the fee of the lands did exceed a competent tocher, which might be answerable to his provision.

But it being further ALLEGED by the defender, That the fee was burdened with the liferent of William Graham and his wife, and that the lands were affected with prior comprisings, which he was forced to redeem. To which it was REPLIED for the pursuer, That, beside the fee of the lands, the de-