

money ; after many years' possession, they did enter in a transaction, whereby Meldrum did discharge him of his whole intromissions, and gave him bond for £100 sterling ; and Lumsden, on the other part, did assign Meldrum to three years' rent, as intromitted with by the Laird of Philorth, during his wadset, with warrandice from his own fact and deed. Lumsden having charged Meldrum upon the said bond, he did suspend upon this reason,—That, at the same time when he gave the bond, he got the said assignation to three years' rent, intromitted with by Philorth ; whereas he offered to prove, by the charger's own oath, that he himself had intromitted all these years.

It was ANSWERED by the charger, That, as to his own intromission, he had a general discharge : And as to the assignation to Philorth's intromission, it was only taxative in so far as Philorth had intromitted ; and he having quit a great deal of his annualrents, which exceeded the sum charged for, the letters ought to be found orderly proceeded.

The Lords, notwithstanding, did suspend the letters *simpliciter* ; in respect that the charger was obliged to warrant from his own proper fact and deed ; whereas he himself had actually intromitted : And found, That the conception of the assignation to three years' intromission by Philorth was as full and obligatory as if it had bore that Philorth had intromitted with the full rents all these years ; otherwise it could not be interpreted but to be a clear cheat and fraud, if it should be taxed to Philorth's intromission ; whereas he never intromitted, but the charger himself.

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1670. February 24. DOCTOR BALFOUR and his SPOUSE *against* WOOD.

IN the forementioned count and reckoning between Doctor Balfour and his spouse, and the heir of her tutor, Mr James Wood, there was an article of the charge, bearing that the tutor ought to count for the sum of \_\_\_\_\_, given upon a wadset, which, being liferented, he ought to have comprised upon a charge against the heir to enter ; of which comprising the legal might have been expired ; and so the pupil had the irredeemable right of the lands after the liferenter's decease.

It was ANSWERED, That the pupil's father himself did lend his money upon the wadset, with a reservation of the liferent of the whole land : And the granter of the wadset being dead, and having neither heir nor executor, nor no other visible estate, the tutor was *in bona fide* not to comprise ; seeing the annualrent of the sums upon the wadset might be yet secured by a comprising by the pupil and her husband, the pursuers, who could not allege any damage by the delaying thereof.

The Lords found the answer relevant to free the defender ; as it would have done the tutor himself, who was not bound to give out money upon a naked diligence, which the pupil, being major, might do.

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