

ANSWERED, The act of Parliament 1621, by confident persons, means only fathers, brothers, and sons, and not brother and sister-in-law, and such remote degrees; neither does the civil law æquiparat them in this case.

(Yet the Lords have found brothers-in-law confident persons, which is just our case here; See *Dury*, 23d March, 1624, *Duff* and *Kelly*: but did not find an uncle and nephew so; 28th January, 1625, *Levinston*.)

REPLIED, That this were to open a door to all fraud and collusion; and that, by the common law, the prohibition that is in consanguinity, either for marriage, diction of testimony, &c. is extended to all the same degrees of affinity, the affection being oftimes the same.

The Lords ordained the defender to condescend upon the onerous causes of her disposition; notwithstanding that it bore to be granted for onerous causes, in which cases strangers are never burdened with any farther probation: so that upon the matter the Lords inclined to find her a conjunct person.

See M'Kenzie's observes on the act of Parliament 1621, page 66, where they found her a conjunct person.

*Advocates' MS. No. 402, folio 218.*

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1673. June.

ANENT NON-ENTRY DUTIES.

IT is reported the Lords have found in an infeftment of annualrent, where the destination runs thus, the granterto pay annualrent as well not infeft as infeft; in that case the non-entry mails are only the blench or feu-duties. The reason whereof appears to be, because the creditor can ascribe what he has got to the said personal obligement, and not to the real right; but if it want that clause, then the annualrent, according to the received practique, being in non-entry, *valebit seipsum*. But our custom may deserve correction, where, upon a nicety of law, an annualrent falling in non-entry is entirely due to the superior, whereas equity seems to ordain that the superior's interest here should be no other than in other non-entries; all of them being unfavourable, and to be restricted. See more of this *alibi*.

*Advocates' MS. No. 403, folio 218.*

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1673. June. DR ARCHIBALD STEVINSONE *against* The EARL OF TWE-DALE.

DOCTOR ARCHIBALD STEVINSONE, pursuing (as executor to his father Mr A. Stevinson, minister at Dunbar) the Earl of Twedale, as representing the deceased Earl, his father, upon one or other of the passive titles, for payment of his proportion of the stipend due for the lands of Beltane, for the year 1630: ALLEGED, He nor his father could never have been liable for that year, because the teind, yea, the stock itself, was wasted by the calamity of war, and the English their incoming that year, and lying about Dunbar.

ANSWERED, That he having pursued the Earl of Roxburgh for some stipend