

the person obliged; and find that James Lord Forrester, the person inhibited, being bound, in William Baillie of Torwoodhead's contract of marriage, as consentor, to infest the said William, the following disposition, albeit by way of wadset, is no voluntary deed, but an implement of the obligation in the said contract of marriage, wherein the said Forrester is a consentor.

This was complained upon by some; because, by the common principles of law, and current of decisions, infestments are only drawn back to anterior obligations, in prejudice of intervening inhibitions, where the anterior obligation is express and specific for granting of that individual right quarrelled, bearing a precept of seisine; else any prior ground of debt were sufficient to secure voluntary infestments against intermediate inhibitions, which would certainly evacuate all such legal diligences; and renders creditors who inhibited most unsecure, who are not obliged to know prior latent personal obligations. But here there is no necessary antecedent specific obligation to grant a wadset, and so no connexion betwixt the two, as law requires.

Yet this was repelled. See 30th November 1681, *Carnegie*.

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1681. June 4. The VISCOUNT of ARBUTHNOT *against* ALLARDICE of that ilk.

THE Viscount of Arbuthnot pursues a reduction, against Allardice of that ilk, of a pretended tack alleged subscribed by the Viscount's father, on this reason, That, wanting a writer's name and witnesses, it was presumed to have been subscribed *in lecto*, at which time he could not prejudge his heir. Allardice, for his defence, repeated a declarator he had intented against the Viscount, to hear and see it found and declared that it was holograph, and his father's hand-writ, and was delivered, read, and seen, by famous persons, in the Viscount his father's lifetime; and therefore that he, as heir, may be decerned to extend the said minute of tack.

The declarator and defence being admitted to their probation, and it being this day advised, they took the Viscount's oath of calumny, if he had just reason to deny that it was his father's hand-writ; and he declaring that he could not tell, the Lords allowed them to the 10th of July next for proving, *comparatione literarum*, it was the late Arbuthnot's hand-writ, as also by witnesses who saw it in Allardice's custody before the late Arbuthnot's death; for, *esto* it were holograph, the difficulty still remains, unless it be proven that it was read and seen in the writer and granter's lifetime.

This farther term of probation the Lords indulged them, because they complained they were cut short of insisting in their own declarator, by engrossing it, by way of defence, into the Viscount's reduction. But they had prevailed with the clerk, and obtained an act for proving on their own summons, which induced the Lords to prorogate the time of leading probation to the 10th of July next.

Another reason of the Viscount's reduction was, that the tack is null, being without an ish. ANSWERED,—It bore these words, "to endure as long as Allardice pleased, he paying two bolls of tack-duty yearly;" which gave him the

nomination of the endurance; and he craved it might last for 500 years to come.

The Lords declared, if Allardice proved the other points, they would determine it to last nineteen times 19 years, which was as long an endurance as ever any tack used to continue in Scotland; but the Lords sustained themselves as having power to determine the endurance, without any debate. So that it may be reconsidered; for it may be debated, if a tack, having no other ish but as long as the tacksman pleases, be valid, and if the Lords, as *boni viri*, may determine the duration thereof.

Sir George Lockhart affirmed, that it was a vulgar error to say, that a holograph writ was presumed to be on death-bed, and so ought not to prejudge the heir; for he was clear a holograph writ ought to militate against the heir of the subscriber, unless, by other adminicles and documents, they instruct that it was subscribed when he was sick and on death-bed. Yet the common received practick seems contrary.

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1681. *June 7.* The KING'S TRUMPETERS *against* ANDREW WOOD, Bishop of Caithness.

THE King's Trumpeters against Mr Andrew Wood, Bishop of Caithness, for payment of 100 merks due to them for his patent of honour as a Bishop.

ALLEGED,—By the Act of Parliament, in favours of the Lyon and his heralds in 1672, there is nothing payable by the bishops to the trumpeters; and, if any have formerly paid, it was *meræ facultatis*, and a gratuity, and no ways a debt.

The Lords found there was no law for it; but found it relevant for the trumpeters to prove that they are in use and custom of getting that sum from every bishop at his inauguration. But, if they found the quantity to vary, then the Lords inclined to look upon it as a mere voluntary donation and a free gratuity.

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1681. *June 10.* ANENT POINDING OF PLOUGH-GOODS.

IN an action, reported by Newton, the Lords found the poinding of plough goods a spuilie, though it was offered to be proven that they had not been actually yoked in the plough for that year; seeing it was made appear to the Lords that it was done in labouring time, which is all that the 98th Act, Parl. 1503, requires.

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