

here, that the Lords were convinced that this bond was granted in contemplation of the disposition then given, and which never took effect, but was passed from by entering into a new bargain in 1661, where two thousand merks is advanced in money, and a bond for 10,000 merks given, and the old £10,000 bond is forgot to be retired : and thir pursuers' mother lived twenty-one years after, and never claimed the first bond, but accepted annualrent of the second yearly ; which she would not have done, if the first had been a perfected bargain.

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1694. *July 25.* M'LELLAN of CALIN *against* SIR THOMAS BURNET, Doctor of Medicine.

MERSINGTON reported the bill of suspension, M'Lellan of Calin against Sir Thomas Burnet, doctor of medicine. His reason of suspension was, That though the bond was for £100 sterling, yet you declared, if I paid at Candlemas 1200 merks, you would accept of it ; and I, being disappointed then of money, am content to pay it now.

The Lords found this was not a penalty, but a restriction, and, having failed, he cannot now be admitted to purge it ; and was not of the nature of *pactum legis commissoriæ in pignoribus* ; and, therefore, refused the bill, and found him liable in the whole.

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1694. *July 26.* The EARL of PANMUIR *against* SIR PATRICK HEPBURN and SIR JOHN HALL.

THE Lords advised the debate betwixt the Earl of Panmuir, and Sir Patrick Hepburn, and Sir John Hall, for payment of the feu-duties of the lands of Auchmethie ; against which compensation was proponed, that, by a charter, the feu-duty was converted into ten shillings Scots for each boll of corn, or the bolls themselves, in the option of the *solventes* ; and yet they had exacted the full ; and so, *condictione indebiti*, ought to repeat.

ANSWERED,—*Imo.* There was a decret of Exchequer, decerning them to pay, to which the Lords were not competent judges ; but it behoved to be reduced before that sovereign court. *2do.* The conversion was illegal, being before the act of dissolution.

The Lords debated long, whether the compensation met, and was liquid ; and if they had right and interest to propone it ; and, anent the reservation in the decret of Exchequer to the Lords of Session, to cognosce on the validity of the charters converting the feu-duty. But at last, before answer, ordained the original charters, given to the Guthries of Auchmethie, where the said conversion is first made, to be produced.

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