

and bring them in *pari passu*: but this was to give too great power to an instrument.

The Lords came to no conclusion in this case, because he had delayed too long; but thought it deserved regulation by an act of sederunt.

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1694. *December 7.* JOHN MAXWELL *against* The VISCOUNT of TARBET.

JOHN Maxwell, grandchild to the Bishop of Ross, having obtained decret against the Viscount of Tarbet for some feu-duties of lands, now belonging to Tarbet, holding of the Bishop of Ross;—Tarbet's reasons of suspension were, 1st. The lands pertained to the Laird of Innes at that time, and he offered to prove he had paid these feus; 2d. *Esto* they were owing, the most he could crave was to point the grounds; and cannot make him personally liable for any years preceding his possession and entry to the lands.

The Lords thought both the reasons relevant; but, in regard there was a decret *in foro* against Tarbet for these feu-duties, they desired the reporter to consider the decret, if these allegiances were proponed, and if Tarbet got a term to prove payment, and succumbed, so as the term was circumduced against him; for in that case he ought not to be reponed. And if, in the first summons, he was craved to be personally liable, and proponed not this defence against it, then it was *competent and omitted*.

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1694. *December 7.* WILLIAM SCOT *against* DOUGLASS of ARDIT.

WILLIAM Scot, son to Bristo, against Douglass of Ardit, on the passive titles, for payment of sundry debts contained in his predecessor's bonds. ALLEGED,—Robert Douglass, my predecessor, disponed to James Scot, your cedent, his whole personal and moveable estate, under a back-bond, bearing, That he, being paid and relieved of all debts, either then due or which afterwards he should acquire, he should denude himself of the remanent benefit of the debts and goods assigned in favours of the said Robert Douglass, his other creditors; and if there were any superplus after that, the same was to accresce to the said Robert, his heirs and representatives; and *ita est* the sums and goods assigned were much more than would have paid all the debts due to James Scot of Bristo; and therefore he either is paid, or might have been paid. ANSWERED,—William Scot, the pursuer, is content to hold account for all his father's actual intromissions, conform to his stated account left under his hand; but cannot be farther liable, especially for the debts in the account-book, whereof there was no instructions delivered to him. REPLIED,—Though James Scot's back-bond does not precisely tie him to diligence, yet, *inest ex natura rei*, when I assign you to my debts, and give up my account-books, it being a moveable subject, you ought not to suffer it to perish, but should have pursued the debtors in the count-