

merks of yearly rent, burdened with 4000 merks of his own proper [debt,] did procure a bond, from his son, of that same sum of 4000 merks for provision of the children; which did not make mention of the first bond: and, near 40 years after the date of his first bond, the son, having satisfied his own bond, was pursued for payment thereof.

The Lords found, That the second bond was in place of the first; and that the son could not be liable to both; seeing that the estate was so inconsiderable, and so much burdened: And that the father did neither deliver nor left the first bond to his children; but was only gotten among the rest of his writs; and never any thing was done thereupon near forty years.

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1668. July 18. The TUTOR of the CHILDREN of FRANCIS ROSS *against* ALEXANDER ROSS.

ALEXANDER ROSS in Coull having bought some plenishing, which belonged to the bairn of Francis Ross, and given bond of 400 merks therefor to their tutor, in name of the children; thereafter, the said Alexander, upon death-bed, making his latter will and testament, did give up, in the inventory of his debts, that he was due, by bond to the tutor, the sum of 400 merks: Whereupon the tutor did pursue Alexander his executors for payment of the sum, as being given up by the defunct himself.

The Lords would not sustain the testament to be a sufficient title, without production of the bond; because they found it was only an error in the defunct designing the bond to have been given to the tutor *proprio nomine*; unless the tutor would condescend to prove that the defunct had granted two bonds,—one for the cause foresaid, and another to himself *proprio nomine*.

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1668. July 22. MARGARET BALCANQUELL *against* CRAIG.

MARGARET Balcanquell and her son being debtors to Hugh Craig, by two several bonds; and having granted a new bond of corroboration for the principal and annualrents, making up, in the whole, 700 merks; for farther security, did grant a tack of two merchant-booths, for payment of £100 yearly of tack-duty; which was to be retained in satisfaction of the bond *pro tanto*. This tack was craved to be declared null, upon the late Act of Parliament anent Debtor and Creditor; because the maills and duties of the said two booths were worth yearly £160; and the granters of the tack were obliged to free the tacksmen of all cess and public burdens whatsoever; so that he was yearly to have £60 more than the annualrent of his money. The question being, If a tack of this nature did fall within the Act of Parliament,—there being only mention made of wadsets, and a general clause subjoined of all such bargains and rights: The Lords were loath to decide the tack null upon the Act of Parliament; because it would thereby have made the bond usury, and the whole sum, and the tacks-