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fourth part of the adjudication to himself, and his expenses. The said Katharine having pursued him to denude, as being intrusted by her, as appears by his back-bond, and that upon payment of his expenses only, without a fourth part, which is *pactum de quota litis*, not allowable; it was *answered*, That this *pactum* was only rejected as to advocates, *ne detur causa calumniandi*, which could not be extended to writers to the signet; *2do*, There was here no paction *pendente lite*; for the back-bond was granted after all process were ended. It was *replied*, That the parity of reason rejects such pactions, as to writers and agents, seeing thereupon occasion is given for pleas to vex and trouble the lieges; and albeit the back-bond be after the end of the process, yet the agreement was made before the ending of the process, during the dependence thereof, or before intenting of the process, upon design to intent the same, which is equivalent, the inconveniency being alike in all. It was *duplied*, That the pursuer having no means of her own, durst not enter heir to her brother for fear of his debts; and, before any process, freely offered to Mr Archibald, that if he would buy in a sum of her brother's, and adjudge his estate, he should have the fourth part, and all his expenses, which might very lawfully be done, there being no plea, but a clear debt of her brother's, to affect his estate, which none could oppose; and yet the defender took the hazard, and had no security from her in case he should lose the sums given out by him; and denies any paction or agreement at any time before his back-bond, which could have obliged him to give this back-bond. Likeas, he had already deponed, that there was a free offer before any process.

THE LORDS ordained him also to be examined, whether there was any paction or agreement before, or during the process for implement, whereof he granted the back-bond, after the process was ended.

*Fol. Dic. v. 2. p. 23. Stair, v. 2. p. 326. 361. & 390.*

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1678. July 30. The EARL of HUME against HUME.

THE EARL of Hume gave in a complaint against Mr Patrick Hume, advocate, bearing, that Mr Patrick had taken right to a plea, anent Coldinghame, depending against the Earl of Hume, and therefore craved that he might be deprived, conform to the act of Parliament against Members of the College of Justice buying pleas. The defender *answered*, That, both by the law, and this statute, there was nothing to impede persons to give or take in free gift, but only prohibiting them to buy, or to purchase pleas for money, while depending; but, in this case, the defender had a disposition from Frank Stuart, his cousin-german, of Coldinghame freely, without giving any thing therefor.

THE LORDS found the defence relevant, and refused the bill.

*Fol. Dic. v. 2. p. 23. Stair, v. 2. p. 643.*