

DUPLIED for the Defender,—Although the term of payment of the first moiety be come, it remains suspended till the condition exist, which is adjected to the obligation itself; and the daughter's marriage, or majority, was only made the term of payment, that annualrent might be due from that time, if the condition shall thereafter be purified. At least, the defender cannot be obliged to pay the first 4000 merks presently, unless the pursuers find caution to restore the same in case they succeed to Dirletoun's money.

The Lords found the 4000 merks due to Margaret Hay, with annualrent thereof since her marriage; and decerned the defender to make payment thereof at the term of Martinmas next, upon the pursuer's finding caution to restore it in case she succeed to Dirletoun's money.

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1710. *July 27.* [ANENT BILLS for GRATIS WARRANTS.]

THE Lords ordered the names of the advocates and writers for the poor to be inserted in all remits to them upon bills for *gratis* warrants. *Page 437.*

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1710. *Dec. 13.* SIR WILLIAM CRAIGIE of Gairsey *against* Sir ALEXANDER DOUGLASS of Egleshaw, and other Freeholders of Orkney.

SIR WILLIAM CRAIGIE pursued Sir Alexander Douglass, and other freeholders of Orkney, to make payment of L9600 Scots, due to him for his fees as commissioner for the stewartry of Orkney to the several Parliaments betwixt the years 1681, and 1702, mentioned in a certificate of his attendance, under the hand of one of the clerks of Parliament.

ALLEGED for the Defenders,—All the inhabitants of the isles of Orkney and Zetland, erected by the Act of Parliament, 1669, into one stewartry, being liable for their proportions of the pursuer's fees, and none of the heritors of Zetland being cited; no process can be sustained against the defenders, till all parties having interest be in the field, that it may be known what every one's proportion is.

REPLIED for the Pursuer,—He was not bound to cite any heritors of Zetland, seeing none of these signed his commission, and he could not know that they had any interest in electing a Commissioner for Orkney: but the defenders must cite them, instruct their capacity to vote in such elections, and their being liable to commissioner-fees, and produce their valuations, before they can pretend to any proportionable deduction upon their account. Besides, the valuations of Orkney and Zetland, in order to proportion the cess, were distinguished by order of the treasury in the year 1693; and Orkney made to pay two parts, and Zetland a third: And the pursuer insists against the defenders only for two-thirds of his fees.

The Lords found, That Orkney and Zetland being one stewartry, the pursuer must call the freeholders of both Isles, and prove their valuations, so as each may be liable only for their own share. For it was thought that the valuations, in