

1623. *February 25.* MARY LYON *against* SIR ROBERT SCOT.

SIR Robert Scot, eldest lawful son to Sir Robert Scot of Thirlstane, by his obligation given to Mary Lyon, obligeth him to take her to his wife ; and also obligeth him, how soon he or his heirs should succeed to his father's living of Thirlstane, to infest the said Mary in an annual-rent of 1000 merks, to be uplifted out of the said lands and living of Thirlstane. Sir Robert after his marriage with the said Mary, being deceased, Mary having registered the bond against a brother of the said unquhile Sir Robert, who was served heir of line to the defunct ; and against the father who was served heir of provision to him, for the defunct, the time of the bond and before, stood infest, and the heirs gotten of his body, in some lands conquered by his father to him, which were not of the old living of Thirlstane, which were by the infestment, in case of failie of heirs gotten of his own body, provided to his father and his heirs, and so he succeeded to his son in these lands, as heir to him by provision ;—and they being charged for implement of this bond, the letters were *simpliciter* suspended for the heir of line, who was ordained first by the Lords to be discussed, in respect of the tenour of the bond, whereby the maker obliged him and his heirs, how soon they should succeed to his father's lands of Thirlstane, then to infest her ; and true it is, that the father was yet in life, so that he could not succeed to these lands, and so could not be debtor to her. This reason was found relevant to liberate the heirs of line, and thereby he was found sufficiently to be discussed ; and thereupon execution being sought in the second place against the father, who was served heir of provision to his son in the foresaid other lands ; the father using this same reason of the heir's, founded upon the tenour and quality of the bond ; that albeit he succeeded to his son in the lands foresaid, by the provision of the infestment, yet he had not succeeded to him in the lands of Thirlstane, wherein his son was never infest, but whereof himself was ever heritor, and to which his son could pretend no right, and so he could not be obliged ; for it were a dangerous example to authorize a bond given by the son, thereby to bind the father without his consent, or any deed done by him, to fulfil the son's obligation in an act contracted by himself, without advice of the father. This reason was not sustained for the father, but the letters and charges were ordained to have execution against him, in respect he was heir by provision to his son, and that he was possessor of the lands of Thirlstane, after he had served himself heir of provision to his son, by the same manner as he possessed the said lands before that service.

*Act.* Hope and Scot. *Alt.* Nicolson and Lermonth. Gibson, *Clerk.*

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1623. *March 1.* JAMES WILLIAMSON *against* ARCHIBALD LAW.

IN an action pursued by James Williamson *against* Mr Archibald Law, who was made assignee to an obligation made to one William Hannage and Dickson his spouse by Mr Robert Williamson, and certain others his cautioners, containing the sum of 2000 merks ; which assignation the said James Williamson, heir and execu-

tor to the said Mr Robert, desired by his summons to be assigned back again by the said Mr Archibald Law to him, as being made in favours and to the use of the said Mr Robert himself, who had only borrowed the said Mr Archibald Law's name in trust to his own behoof, he being his sister's son, on whom he might have reposed and concredited the same;—the defender compeared in this cause, and defended, contentiously, that this assignation which was filled up with his name at the desire of the said Mr Robert, who, as the defender alleged, had freely given the same to him; likewise it was registered in the books of Council, bearing his name, and letters raised thereupon before the decease of the said Mr Robert; and therefore could not by any presumption be taken away from him, upon pretext of borrowing his name and trust, the trial whereof ought only to be taken by writ or the defender's oath; and that the writ perfected could not be destroyed, nor otherwise taken away. The Lords examined in this cause certain persons witnesses who knew of the trust, albeit they were not inserted in the assignation, which they did *ex officio*: and by their declaration, albeit the assignee was solemnly examined, and denied the trust, and took upon his conscience, that the assignation was made to himself, and to his own proper use, by the free gift of the same, procured to him by the said Mr Williamson his mother-brother, and albeit the same was registered in Mr Robert's time, and so was made the assignee's evident in his own time; yet they found the same to be done in trust, and therefore ordained the defender to make retrocession of the said assignation, in favours of the said pursuer representing the said Mr Robert.

*Act.* ———. *Alt.* Russel. Scot, Clerk. *Vid.* 27th July 1624, Lady Stanypeth.

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1623. *March 4.* The EARL of LINLITHGOW *against* JOHN SHARP.

IN an action of compt and reckoning betwixt the Earl of Linlithgow and Mr John Sharp,—the Lords sustained an obligation granted for repayment of tailyed monies, according to the species of money granted to be received by the obligation; and found that the party obliged ought to repay the same, according to the prices, as that sort of monies was worth and gave, the time when the obligation was pursued, without defalcation.

*Act.* Nicolson, younger. *Alt.* *per se* and Stuart. Gibson, Clerk.

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1623. *March 27.* SMITH *against* The BAILIES of ELGIN.

SMITH having pursued the bailies of Elgin, for a debt owing to him by ———, for the which his debtor being apprehended, and put in ward by them, by letters of caption, they thereafter suffered him to pass out, and repair in their free and public streets as a free person: The bailies excepted, that they ought to be assoilyed, because they having taken the debtor conform to the charge executed against them, he was put to liberty by virtue of a charge