

1624. *Feb. 21.* STUART *against* SIR GEORGE HUME.

IN an action betwixt Stuart and Sir George Hume,—the Lords preferred and admitted the answer of a person's majority, against an allegiance of that person's minority; which was repelled, albeit he who alleged minority produced an extract out of the minister's books, of the time of the baptism of the person whose age was controverted, and, conform thereto, asserted also to prove that she was born at such a time particularly, whereby she would be found yet to be minor; which was repelled, because the party offered to prove majority by sufficient lawful probation; wherein he was preferred, as said is.

*Act. Craig. Alt. Nicolson.*

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1624. *Feb. 25.* FERNE *against* CAPTAIN WISHART'S HEIRS.

IN the cause of Captain Wishart's Heirs, whereof mention is made, 18th Feb. 1624,—the Lords found that an assignation made by umquhile Captain Wishart, to a debt owing to him, after the date of that bond mentioned and controverted in that cause, and made to the same person to whom that bond was given, and containing as great or greater sums than the sums in the bond, and payment made to the assignee thereof, conform to the assignation,—was not enough to take away the foresaid preceding obligation, or to liberate the heir therefrom; seeing the assignation was not made for that cause, but that the same bore to be made for sums paid to the cedent, and confessed by him in the assignation:—and found it not relevant, where it was referred to the assignee's oath, that no sums were paid therefor; for, albeit it were so, yet the cedent might confess the receipt of money which he received not, and so the assignation ought not to take away the prior bond, by the alleged presumption of payment and satisfaction, by virtue of that posterior assignation, which had no mention or relation to the bond, or sums thereof. *Partibus ut illic comparentibus.*

*Vid. 24th July 1623, Stuart; 4th February 1623, Guild; 13th November, 1624, Wallace of Elderslie.*

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1624. *February 26.* AIKMAN *against* HUNTER.

IN an action betwixt Aikman and Hunter,—the Lords found,—where a debtor is, by his bond, obliged to his creditor in a certain sum, and, after this bond, this same creditor, by another posterior obligation, granted him to be owing to his said debtor a certain sum,—that this posterior bond, granted to the former debtor, ought not to import liberation, to the debtor, of the preceding debt: as if, through the creditor's acknowledging him to be addebted, by virtue of the posterior bond, to him who was debtor by the prior obligation, the first debt should be presumed to become extinct and to cease, and that the creditor