

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.

Page 112.

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.

Page 114.

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

could not challenge any debt owing to him, seeing he was become himself debtor to him to whom he was creditor. Which prior debt, the Lords found, was not taken away by the foresaid posterior bond, upon any pretence that he, who was a prior creditor, needed never to have constituted himself debtor thereafter to him who was standing addebted unto him; seeing he might have allowed or defalked the preceding debt, which is probable, and presumed he did, before he gave a new bond to him who was standing his debtor before, as said is. Which presumption the Lords found not sufficient to extinguish or take away the first bond, but found that both the bonds might subsist, and that the last should only compensate the first bond *pro tanto*.

*Act. Lawtie. Alt. ———. Gibson, Clerk.*

*Page 114.*

1624. *February 27.* MAXWEL of Pollock *against* MAXWEL of Cowhill.

IN an action of reduction, at the instance of ——— Maxwell of Pollock against ——— Maxwel of Cowhill, for reduction of an heritable right of lands holden of the abbacy of Melross, upon the reason of anteriority, because the pursuer was first infeft and first confirmed,—the defender compearing, and proponing an exception that there was a submission betwixt the parties' fathers (they then being infeft in the lands,) of all controversies betwixt them, to certain judges, whereupon decret followed, by the which the right to the lands libelled was decerned to pertain in all time coming to the excipient;—this exception was not sustained: for the Lords found this decret not sufficient to maintain the defender in the right of the lands controverted, proceeding upon a submission of the tenour foresaid; for the Lords found that a submission, wherein parties submitted all controversies generally, could not be a warrant to decide the heritable right of the lands to pertain to one of the parties and to take the same away from the other party; except either the right of the lands had been especially submitted, or else that the same had been given in by the parties in their claims before the judges: and that the general clause, submitting all controversies betwixt the parties, could not be a sufficient warrant to pronounce that decret.

*Scot, Clerk. Vid. 15th December 1631, Dr Kincaid against Aikenhead.*

*Page 114.*

1624. *March 23.*

DUFF *against* KELLIE.

IN an action of double-poining betwixt Duff and Kellie,—the Lords would not sustain a disposition made by a common debtor to sundry persons, done to one who was a conjunct person, *viz.* brother-in-law to the debtor, bearing to be done for onerous causes and for satisfying of a debt owing to the receiver,—except the said party, to whom the same was made, should qualify and produce and instruct the debts, for the satisfying whereof the said disposition was made, otherwise than by the confession contained in the narrative thereof. And the