to be paid to the father, during his lifetime; but this, in heritable rights, holds not.

Act. Russel. *Alt.* Nairn. *Vid.* 21st March 1623, Cunningham *against* E. Glencairn; 10th February 1624, Sir John Ker; 27th January 1630, Ross *against* Hume.

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1624. *June* 17. CLERK *against* BROWN.

THE Lords are in use to find decreets null, which are given by any inferior judges upon the defender's confession and consent, where the said confession and consent is not warranted by the subscription of him who gives the same, extant in the process: and find the assertion of the clerk, or his minute in the process, not authorized with the party's subscription, no warrant to pronounce decreet thereupon; except that the said confession proceed and be made after citation made to the defender to compear to give his oath of verity, before the judge, upon the libel and claim, the same being referred to his oath; and the term circumduced. Which was found this day in the action betwixt Clerk *against* Brown, and of before in the action betwixt Doctor Jelly and John Ury.

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1624. *June* 29. THOMAS EDGAR *against* WILLIAM HALLIDAY.

IN an action of registration of a bond made by umquhile Mr James Halliday, pursued by Thomas Edgar against William Halliday, as served heir to his brother,—the Lords sustained the action against him, as heir served: albeit it was alleged, that no action could be granted against the heir, while the expiring of year and day after the defunct's decease, which was not expired in this case, as was provided by the 76 Act, 6 Parl. Ja. IV. Which allegeance was repelled, in respect that the defender was served heir, by the which the liberty and time of a year after the defunct's decease, by the intention of that Act, is only granted to persons to deliberate and advise, if they will enter heirs, or not; of the which liberty, by the said entering heir, he had prejudged himself.

In this process, also, the Lords found, that a bond bearing to pay annual, albeit not containing a clause of infeftment, was heritable, and so was prestable by the heir of the defunct; and not by the executor, of necessity, as if they were only liable.

Act. Lawtie. *Alt.* Craig. Gibson, *Clerk.* *Vid.* for the first part of this decision, 11th November 1624, L. Ellerslie; 29th July 1623, Stuart against Fleming; *item*, 12th March 1622, Fairlie; for the last part of the decision, 29th March 1626, Couston against Stuart.

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