

4000 merks, made to his brother Robert Donaldson, by their umquhile father Mr James, as being made *in lecto ægritudinis*, the bond being heritable;—the Lords first assoilyied the defender from the byrun annual-rents, ever till the intending of the action. Next it was alleged by the defender, that the bond was made moveable by a charge the time of the cedent's health, and so might be assigned. Answered, Not relevant; because no execution had followed that charge; and furthermore, that the assignation bore not only to byrun annual-rents owing, but also for time to come; whereby he should be reputed to have past from the first charge. The Lords sustained the assignation, in respect of the charge; because, the bond being once made moveable by a charge, made the assignation following thereupon good and valid; which being once so, and nothing having followed which might frustrate it, (for the assignee might lawfully continue the payment, the right being established in his person,) except they would say, that, after the same charge, the cedent himself had received annual-rent for the term following,—these words (to come) could not prejudice the assignee.

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1624. *March 9.* The LAIRD of TOUCH *against* The TENANTS of WILLIAM HOME of HARDISMILL.

WILLIAM Home, bastard son to the late Earl of Home, being gifted by his father with the provostry of Douglass, 1611, assigned the whole byrun mails of the same to William Home of Hardismill, 1621. The Laird of Touch having obtained Hardismill's liferent, pursued the tenants for these byruns in a special declarator. Excepted, No process upon the summons till they were continued. Replied, That needeth not; because the summons depended upon the general declarator, and, besides, were privileged. Duplied, The general declarator did work no more, but only put the donator in the assignee's place, and, if the assignee could not pursue without continuation, no more the donator; especially the defenders being third persons. The Lords sustained the summons without continuation.

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1624. *March 9.* DOUGLAS of IVELY *against* The LAIRD of EAST-NISBET.

DOUGLAS of Ively having obtained the liferent-escheat of John Stuart of Coldingham, pursued a special declarator of East-Nisbet's liferent, as vassal to John Stuart. Excepted, No process upon John Stuart's liferent, because, when it was gifted by the king to Douglas, John Stuart had not been then the king's vassal year and day; so that East-Nisbet's liferent could not appertain to him. Replied, That the priory of Coldingham was erected in John Stuart's person, 1588; so that he was ever since, if not really, at least potentially, the king's tenant; and so, since no other right had intervened betwixt the erection and his sasine, (which was 1621,) it ought to be drawn back to the first gift. Which reply the Lords found relevant.

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