1633. *March* 20. LYON *against* STUART.

No 5.
A liferentrix accepted a bond from her son in lieu of her liferent, declaring she was willing he (without mentioning heirs) should enjoy her liferent during her life. Found personal to the son.

HELEN LYON being liferenter of the lands of received a bond from George Lyon her umquhile son, whereby he obliges him and his heirs to pay to her yearly for the said lands 100 merks, seeing she was content that her said umquhile son should bruik the same during her lifetime. This was the tenor of the bond, personally conceived to her son, not making mention of his heirs, but only of himself, albeit the son had obliged himself and his heirs to her, for payment of the said yearly duty, by the same bond. Thereafter diverse years, the son being dead, the mother pursues removing against the relict of her son, who defending herself with that bond, and that she had tolerance of her son, who was heir to his father, granter of the bond, and who had the benefit thereof, and of the pursuer's liferent thereby. THE LORDS repelled the allegeance, and found, that this bond, albeit it was accepted of the pursuer, and produced out of her own hands, bearing, that she was content that her son should bruik during her lifetime; that the same was only a personal favour granted to her son personally, and not to his heirs; and that his heirs nor relict had no right to bruik thereby, but was expired by the son's decease, who granted the same: And albeit the bond bore, that the son and his heirs were bound to pay that duty yearly, during the mother's lifetime; whereby it might appear, that the mother might pursue the heir of her son therefor, and that he was obliged thereby to her; yet the LORDS found, that she gave that benefit only personally to her son, and that she was not obliged by the tenor foresaid to continue the same, after her son's decease, to any others his heirs or relict, but at her own pleasure. Here I conceive not how the heirs can be obliged to her, and she not to them.

Act. *Hope*. Alt. ——.

*Fol. Dic. v.* 2. *p.* 73. *Durie, p.* 680.

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1635. *March* 21. LO. YESTER *against* L. INNERWICK.

No 6.
Summary diligence, to which the debtor has consented by a clause of registration, is a privilege of the bond, and goes along with it to assignees voluntary or legal; for instance, to a compriser.

THE Lo. Yester having comprised from his debtor an heritable bond, bearing obligement to infeft in lands, which bond being judicially assigned to him by the comprising, whereupon he having charged the debtor of the sum in that bond, to pay the sum to him, as compriser; and the debtor suspending, *alleging*, That a compriser cannot so summarily charge by letters of horning, but ought to pursue by way of action the debtor, to hear him to be decerned to pay the sum; the LORDS repelled this reason, and sustained the charges; and found, that the bond being comprised at the instance of the charger, and the same being thereby judicially assigned to him, the right of the bond was

No 6.

as validly assigned to the compriser, as if the creditor had assigned the same to him, *quô casu* upon that assignation he might have raised summary charges of horning, the cedent and all the parties being yet living, even so the compriser might do the same. See No 4. p. 208. *voce* Adjudication.

Act. *Stuart*. Alt. ———. Clerk, *Hay*.

*Fol. Dic.* v. 2. *p.* 73. *Durie*, *p.* 763.

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1662. *January* 9. Earl of Murray *against* Laird of Grant.

No 7.
Heirs found to have the benefit of an obligation to re-dispone lands, altho' heirs were not expressed, but appeared to have been omitted by negligence.

The Earl of Murray pursues the Laird of Grant, to re-dispone him certain lands, which the Earl's father had disponed to the defender; and had taken his back-bond, that if the Earl's friends should find it prejudicial to the Earl, then upon payment of 2800 merks, precisely at Whitsunday, he should re-dispone; *ita est*, the Earl's friends, by a testificate produced, found the bargain to his loss; therefore he offered the sum to the defender, in his own house, which he refused; and now offers to re-produce it, *cum omni causa*. The defender *alleged*, Absolvitor; first, Because the back-bond is *pactum de retro vendendo*, and so a reversion, which is *strictissimi juris*, and not to be extended beyond the express terms thereof; which are, that if James Earl of Murray should repay the sum at Whitsunday 1653 precisely, the defender should re-dispone; but there is no mention of the Earl's heirs, and so cannot extend to this Earl, though he were heir, as he was not served heir the time of the offer. The pursuer *answered*, That when reversions are meant to be personal, and not to be extended to heirs, they do bear, 'That if the reverser in his own time, 'or at any time during his life,' &c. or some such expression; but there is nothing such here; and the pursuer was retoured heir to his father, who died shortly before the term of redemption; and having used all diligence, he cannot be excluded by such an accident, which he could not help.

The Lords repelled both the defences, albeit there was only an offer, without consignation; seeing the back-bond did not bear premonition, or consignation, but only payment, which the pursuer now offered.

*Fol. Dic.* v. 2. *p.* 72. *Stair*, v. 1. *p.* 77.

*** Gilmour reports this case:

1662. *January* 7.—The deceast Earl of Murray feus a piece of land to the Laird of Grant *anno* 1653, and Grant gives a back-bond, that if the Earl should by advice think fit rather to have back the feu, than that Grant should bruik it, he is obliged to denude himself, the Earl always paying the money at Whitsunday thereafter. The Earl dies before Whitsunday; and this Earl, his son, within five or six days before his service as heir, offers the money to Grant, by