

of all debts and sums owing by his said father : And the defender alleging that this bond could not prove him successor *titulo lucrativo* ; for that narrative clause anent the providing of the defender, or giving way to his provision, being but narrative words, cannot be found obligatory to constitute the defender successor *titulo lucrativo* ; seeing the truth is, and he offers to prove, that, whatever provision he has attained to, it is for causes most onerous, and for sums of money debursed by the excipient, far exceeding the avail of that which he has obtained by the said provision ; and condescended on the particulars and instructions thereof : and albeit that clause of the bond, obliging him to pay his father's debt, be a good ground whereupon he might be pursued by way of action to pay the same,—in which case, when he is so pursued, he shall elide the same,—yet, that he can be convened as successor *titulo lucrativo*, where he does instruct so clear a cause onerous,—it is against all reason, law, and conscience ; and only for a word narrative, which by no equity can be drawn to such an extent ; for if, by the bond produced, the defender had been obliged to pay some particular designed debts therein-named only, it were iniquity to conclude (albeit the narrative had been of the same tenor whereof it is,) that therefore the defender should be found successor *titulo lucrativo* to his father, and were thereby holden to pay all his father's other debts, by and beside the special debts which he was bound to pay, and which he never could eschew in law, if this ground hold that the words foresaid in the narrative makes him successor ;—the Lords repelled this allegiance ; and,—in respect of the foresaid words, by the which the Lords found that the defender had acknowledged himself to be provided by his father, and so to be successor to him,—they decerned the contract to be registrate against him, *hoc nomine*, as successor, as said is.

*Act.* Advocatus and Nicolson. *Alt.* Stewart and Craig. Gibson, Clerk. *Vid.* 21st March 1634, Orr. Page 868.

1638. December 21. ————— against —————.

IN a pursuit for payment of the sum of 60 pounds contained in this defender's bond, which bore to be all written and subscribed by the defender's own hand ; and the defender compearing and alleging the bond to be null, because it wanted witnesses : And the pursuer opposing the bond, bearing the bond to be the defender's own hand-write, as said is ;—the Lords repelled the allegiance, in respect the bond bore to be the defender's own writing, all written by himself ; which the Lords sustained, without necessity of witnesses, seeing the defender denied not the same to be his hand-write ; in which case, if he had denied, the pursuer behoved to approve the same.

*Act.* ———. *Alt.* Nicolson, younger. Gibson, Clerk.

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1642. February 10. JOHN LESLIE against JOHN DICKSON.

MR John Leslie being retoured heir to his umquhile brother, Colonel George

Leslie, with concurrence of the executors of the said umquhile Colonel, gives in a supplication, craving some bonds belonging to the umquhile Colonel, which was consigned in John Dickson's hands as clerk, to be given up to them by him; and the executors to the said umquhile Colonel's relict alleging, that this summary order could not be sustained by way of supplication, but ought to abide an ordinary pursuit, by way of action, that all parties having interest might be called; likeas they, as having special interest, compear, and allege, that, if they were cited, they would answer that the relict has right to the half of the bonds and sums therein, there being no bairns on life betwixt them: Notwithstanding whereof the Lords ordained thir bonds to be given up to the supplicants by the clerk, upon inventory.

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1642. *February 15.* HALPLAND *against* CRAWFURD.

ONE Halpland having obtained decret of removing against Crawford of Camlarge, pursues his daughters as charged to enter heirs to their defunct father, and their husbands, to pay the violent profits of the said land intromitted with by their umquhile father. This action, and all actions of violent profits, the Lords found, ought to abide continuation; and the rather where the summons bore no privilege, as being accessory to the Lords' decret of removing, which preceded.

*Scot, Clerk.*

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1642. *July 16.* JOHN ELDER *against* JOHN MERCER.

JOHN Elder, son to Henry Elder, clerk of Perth, being provided to the office of clerkship in Perth, by the council of the town, with reservation of his father's liferent, in April 1623, at which time he was an infant within three years of age; with provision that he, with his tutors, by advice of the council of the town, should appoint deutes to serve therein during his minority; and the father thereafter dying in October the same year, 1623, John Mercer is provided to the same office vacant by his decease, and is provided during all the days of his lifetime; in which provision in the clause of warrandice thereof, special exception is made of that prior provision granted to John Elder, the deceased clerk's son; likeas the said son, when he was past majority, was also admitted and received by the council of the town to that same office: and they contending who should be preferred to the said place, which the said John Mercer alleged was only due to him, he being provided by a lawful manner of vacation, *viz.* the incumbent's decease, and during his lifetime, and having served therein 20 years bygone; and the other provision being null, not having a cause of vacation, but bearing reservation of his father's liferent, who was then living; and being granted to an infant, who could not serve in that office, and he wanting tutors, and no deutes being either sought, or given to him, his gift given to