

1664. *January 16.* JAMES BANNATYNE *against* THOMAS ROOME.

SIR JO. CHARTERS of Amesfield, as principal, Robert Charters of Bodisbey, Jo. Charters of Auchinstrowan, and George Roome of Kirkpatrick Irongray, as cautioners, by their bond in 1637, oblige [them] to pay to Ja. Bannatyne, sometime in Leith, now in Musselburgh, the sum of 5000 merks, payable the Lambmas after; with this provision, that if the said Ja. were content to supersede and continue the said payment after the term above mentioned that then the principal and cautioners, conjunctly and severally, shall be obliged to infest him in an annualrent, effeiring to the sum of 5000 merks, to be uplifted out of any of their lands. This bond is registred in 1644. Ja. Bannatyne, in 1657, charges Thomas Roome, son to the deceased Thomas Roome of Cenden, and oy to the said George Roome of Kirkpatrick, one of the cautioners in the bond, to enter heir to his father and goodsire; and then raises summons against him, warning him to compear and hear himself decerned to pay that 5000 merks, for which his goodsire was caution. He compears, and produces a renunciation to be heir to his father and goodsire. It was objected against the same, that it was not subscribed by his tutors or curators, though he was a minor. Whereupon the then commissioners gave forth decret against him, decerning him to pay the said sum. Yet if he or his procurators should produce a valid renunciation betwixt and June 1658, that then the same should be received. Which they failyied to do. In 1663, James Bannatyne raises a summons of wakening anent the same cause; wherein there was produced a renunciation of the said Thomas Roome: but, beside that, the same was not subscribed by his curators, it was not a renunciation to be heir both to his father and goodsire, but only to his father.

For which reasons the Lords rejected the renunciation, and adhered to the decret in 1657; only provided that if the defender's procurators should produce a valid renunciation, subscribed by him and his curators, and wherein he renounces to be heir both to father and goodsire, betwixt and the 5th of February next the same should be received, and this their decret *condemnatory* turned into a decret *cognitionis tantum causa*.

*Act.* Mr. Samuel Gray. *Alt.* Mr. Walter Cant.

*Signet MS. No. 83, folio 31.*

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1664. *January 16.* HELEN HUGGANE *against* WALTER SCOT of Briershaws.

MR. HEW ELPHINSTON in Galasheills, by his latter will and testament, nominates Walter Scot of Briershaws, his sole executor and universal legatar. Mr. Thomas Lowes, minister at Galasheills, is notary thereto. This testament Briershaws confirms. Whereafter Helen Huggane, daughter lawful to Andrew Huggane in Hadhope, procreated by him on Janet Elphinston, sister to the said Mr. Hew, as nearest of kin to the said Mr. Hew, and so founding right to his executry, thereon intents a summons of reduction of the said testament and confirmation; summoning Briershaws to compear; as also the commissary, and commissary clerks of Peebles for their interests in confirming the same, to hear and see the same declared null; on this reason, because the said nomination or testament was