

1685 and 1686. SIR JOHN RAMSAY of WHITEHILL and ANNA CARSTAIRS *against*  
CARSTAIRS of KINNEUCHAR.

1685. *November 24.*—THE case of Sir John Ramsay of Whitehill and Anna Carstairs, his spouse, against Carstairs of Kinneuchar, was debated *in præsentia* and decided. The Lords considering that, by the decret 1664, the aliment is constituted to the mother and daughter indefinitely, (without declaring their shares,) and that it is thereby appointed that the wife's infestment shall be as effectual for the said aliment as for her jointure in case her husband were dead, (he being furious;) they found the mother could not restrict the aliment in prejudice of her daughter, after her marriage, by her contract of restriction, but that the pursuers have right to 700 merks, as the equal half of 1400 merks, for all years after the marriage; and sustained the defence, that the mother did aliment the daughter, and likewise the allegiance, that the daughter, pursuer, is executrix to her mother, and so is liable to warrant the transaction made by her in so far as the executry goods extend: and also sustained the allegiance, that Sir John Ramsay has homologated the said contract by his discharge: and assigned a day for proving. And the discharge being produced, and advised by the Lords on the 16th of December, they found the pursuers had homologated the contract of restriction by granting that discharge; and therefore assolied the defender from any superplus aliment acclaimed more than is contained in the contract of restriction. *Vide more, 2d January 1686.*

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1686. *January 2.*—Sir John Ramsay gave in a bill reclaiming against the interlocutor *supra*, 24th November 1685, alleging that he and his Lady had only discharged what was due to her as executrix to her mother, but not the half of the annuity due to her *jure proprio*, and so had not homologated the contract of restriction.

The Lords refused the desire of this bill. The President was clear; though he had been Sir John Ramsay's advocate in this same cause, and gave him hopes that he might gain it.

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1686. *January 5.* DICK of GRANGE *against* MURRAY of SKIRLING.

THE case of Dick of Grange and Murray of Skirling was heard in presence. There being a wadset of some lands affected with a back-tack, under an irritancy that it should expire if two terms run in the third unpaid; Grange's mother, to prevent this, paid the back-tack duty, and before her death assigned this to her son. Afterwards the three terms' failie being like to be incurred; Grange offering to pay it, Skirling alleged he had no interest. ANSWERED,—*1mo*, Any may purge an irritancy. *2do*, He had an interest; for, if he did it not, he would lose the money formerly paid out by his mother.

The Lords found he had interest. Then Skirling offered to redeem from Grange. The Lords found it was more reasonable and just that Grange should be preferred, and therefore allowed him to purge the failie; and repelled Skirling's offer of paying him.

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1686. *January 7.* DOCTOR SINCLAIR *against* SIR JAMES COCKBURN and LORD SINCLAIR.

THE case of Doctor Sinclair against Sir James Cockburn and Lord Sinclair was reported by Carse. The first point was: the Doctor having got a bond of provision from his brother Hermiston, this Lord Sinclair's father, for 2500 merks; when he is abroad he draws a precept for 500 merks on Sir James Cockburn, payable to — on his discharge; which presupposes that there were effects in Sir James's hands, whereas there were none but only a part of the Lady Hermiston's annuity, to the arrears whereof the Doctor has since got right. And Sir James contending that this was *indebite solutum*, and no specific discharge of it; the Lords found, seeing the Doctor had granted some posterior discharges, though they were general, yet they satisfied the quality of the precept. Then Sir James offered to prove, by the Doctor's oath, that this was never allowed him; which was found relevant.

The second point was, Sir James remitted 1100 merks to the Doctor in France, upon bills of exchange: when the Doctor comes home, he counts with Lord Sinclair, his nephew, and gets a bond from him (without discounting the sums paid by Sir James,) for 5000 merks, being both his portion and the by-gones of his mother's jointure. When Sir James comes to count with his son-in-law Lord Sinclair, and gives up thir articles paid to the Doctor, my Lord refuses to allow them: whereon Sir James raised an action against the Doctor for repayment; and the Lords assoilyied the Doctor, upon this ground, that it is presumed thir prior payments were all discounted at the time of the posterior new bond. Sir James Cockburn gave in a bill against this, that the presumption cannot hold unless he prove that Lord Sinclair knew of thir partial payments at the time he granted the Doctor this new bond: which seems reasonable; for, if they did not consist with his knowledge, how could he default them.

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1686. *January 8.* The SHERIFF-DEPUTES of EDINBURGH *against* HUTCHISON.

THE two Sheriff-deputes of Edinburgh put in a query to the Lords anent a retour of quinquennial possession of one Hutchison in Newbottle, a traitor, who had been at Bothwell-bridge, whether the calculation of the rebel's five years' possession must be of five years immediately preceding the doom of forfeiture, as the 2d Act 1584 seems to require, or if it must be five years before