

sides. But the Court *nem. con.* found the defender liable for the principal sum with interest and expenses of process. I was in the Outer-House during this day's debate, (22d January 1751) and gave no opinion.

17th December 1751, Scott as executor decerned to Hepburn of Kingston sued M'Lachlan for L.700 and some more robbed from him in October 1745, when his father M'Lachlan levying the Pretender's Cess in East Lothian, and for which M'Lachlan sent the young Pretender's bond to a friend of Kingston; and on a proof led and litigious debate, the defender as heir was found liable. Scott then applied for confirmation, but was opposed by a brother and sister, who claimed as nearest of kin, upon which he produced a writing by Kingston, which happened to bear even date with the young Pretender's bond, assigning the money to the pursuer's father for his behoof, and requesting the father to call for and require payment of the money, wherein he describes the money thus, "L.740 agreed upon to be levied by Colonel M'Lachlan for behoof of," &c.—then gives the young Pretender all the titles assumed by himself. This pleaded first as evidence that the money was paid voluntarily; but that we repelled on the 4th, in respect of the proof of force brought in the process. Next, some of us had a difficulty whether process could be sustained on such a writing, particularly Kilkerran and President, (which last thought it evidence of voluntary payment;) but as the money could not thereby be forfeited, and all the question was whether it belongs to the pursuer or his brother and sister, we thought that this deed was a sufficient proof of his will that the pursuer should have it; and the purpose of the deed, and circumstances of the person were some sort of excuse for the treasonable expressions in it. The Pretender was then in possession of this country, and this deed intended as a title to solicit payment from him, and therefore he behoved to give him the titles that he assumed to himself.

14th January 1752, On a reclaiming bill against the interlocutor marked 17th December, and answers, and after calling the parties, Whether they could offer any other proof, besides this odd assignation, of Kingston's disloyalty, or his being reputed a Jacobite? we so far adhered to the former interlocutor, as to find that notwithstanding this assignation there was sufficient evidence that the money was by force taken from Kingston. But on the second point both Milton and I and others altered our opinion, and by a great majority found that no action could be sustained on this assignation. I thought it deserved to be burnt by the hands of the common hangman, and therefore could not be the title of an action.

No. 24. 1752, June 3. EARL OF GALLOWAY *against* A. STEWART.

THE Lords found that action did not lie on a bond granted in order to procure to the granter the King's remission.

No. 25. 1752, Feb. 7. SIR MICHAEL STEWART *against* EARL DUNDONALD.

IN 1698 when John Lord Cochran had two sons alive, William Cochran of Kilmaronock, his uncle, gave a bond to Mr John Stewart of Blackhall, bearing for a certain sum of money received to pay 100 guineas, how soon he or heirs of his body should succeed to the honours and estate of the Earldom of Dundonald. Sir Michael sued the present