

tor to the said Mr Robert, desired by his summons to be assigned back again by the said Mr Archibald Law to him, as being made in favours and to the use of the said Mr Robert himself, who had only borrowed the said Mr Archibald Law's name in trust to his own behoof, he being his sister's son, on whom he might have reposed and concredited the same;—the defender compeared in this cause, and defended, contentiously, that this assignation which was filled up with his name at the desire of the said Mr Robert, who, as the defender alleged, had freely given the same to him; likewise it was registered in the books of Council, bearing his name, and letters raised thereupon before the decease of the said Mr Robert; and therefore could not by any presumption be taken away from him, upon pretext of borrowing his name and trust, the trial whereof ought only to be taken by writ or the defender's oath; and that the writ perfected could not be destroyed, nor otherwise taken away. The Lords examined in this cause certain persons witnesses who knew of the trust, albeit they were not inserted in the assignation, which they did *ex officio*: and by their declaration, albeit the assignee was solemnly examined, and denied the trust, and took upon his conscience, that the assignation was made to himself, and to his own proper use, by the free gift of the same, procured to him by the said Mr Williamson his mother-brother, and albeit the same was registered in Mr Robert's time, and so was made the assignee's evident in his own time; yet they found the same to be done in trust, and therefore ordained the defender to make retrocession of the said assignation, in favours of the said pursuer representing the said Mr Robert.

*Act.* ———. *Alt.* Russel. Scot, Clerk. *Vid.* 27th July 1624, Lady Stanypeth.

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1623. *March 4.* The EARL of LINLITHGOW *against* JOHN SHARP.

IN an action of compt and reckoning betwixt the Earl of Linlithgow and Mr John Sharp,—the Lords sustained an obligation granted for repayment of tailyed monies, according to the species of money granted to be received by the obligation; and found that the party obliged ought to repay the same, according to the prices, as that sort of monies was worth and gave, the time when the obligation was pursued, without defalcation.

*Act.* Nicolson, younger. *Alt.* *per se* and Stuart. Gibson, Clerk.

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1623. *March 27.* SMITH *against* The BAILIES of ELGIN.

SMITH having pursued the bailies of Elgin, for a debt owing to him by ———, for the which his debtor being apprehended, and put in ward by them, by letters of caption, they thereafter suffered him to pass out, and repair in their free and public streets as a free person: The bailies excepted, that they ought to be assoilyed, because they having taken the debtor conform to the charge executed against them, he was put to liberty by virtue of a charge