

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.

Page 54.

---

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.

Page 55.

---

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

executed against them at the instance of the debtor, who had obtained suspension of the pursuer's decret. The Lords repelled this allegiance, in respect the pursuer offered to prove, that before the suspension was purchased by his debtor, and before any charge was given to the bailies to put him to liberty, the debtor was out of ward, and had free course by repairing to the streets at divers times. Which answer the Lords found relevant; for the Lords found it was not enough for the magistrates to incarcerate and take the rebel, except he were detained in prison, and kept therein, until he were freed by order of law; and therefore, albeit he was thereafter *ex post facto* relieved by a warrant, yet they stood debtors to the party, because he was put out of ward before they had any warrant: neither was this respected by the Lords to free the bailies, that they offered to restore him to ward *cum omni causa*, and that any freedom he had before the suspension, they would be answerable therefor to the pursuer, concerning any deed done to his prejudice during that time, whereby he might be found less *solvendo*, than when he was put first in ward; and so seeing the party had no prejudice, and that they should enter the rebel *cum omni causa*, they ought not to be decerned to pay the debt. Which allegiance was repelled; for the Lords found, that the warding is a punishment of the debtor, from the which the magistrates cannot relieve him at their own hand, but upon hazard of the debt; and therefore sustained the action.

*Act. Lawtie. Alt. ———. Scot, Clerk. Vid. 30th March 1626, Gemmel against Bailies of Glasgow; and 20th November, 1623, L. Aytoun.*

*Page 63.*

---

1623. *March 28.* The MASTER of LAUDERDALE *against* the VASSALS of the PRIORY of HADDINGTON.

THE priory of Haddington, being erected in a temporal barony to the Master of Lauderdale, in the Parliament 16 years: in the which Parliament also, Sir John Scot obtained a ratification of his infeftment of the lands of Pittarchy, which was disposed of before by the king, to be holden of the king, by virtue of the act of annexation; the same lands before the act of annexation, being holden of the abbey and priory of Haddington:—the Master of Lauderdale intends an action of improbation against the vassals of the priory, erected to him as said is, and amongst others against the said Sir John, for production to him of his evidents of the said lands. In the which action the said Sir John comparing and defending himself, that he could not be compelled to produce at the instance of this pursuer, in respect he was vassal to the king by the annexation; likeas his infeftment so granted to be holden, was ratified the same time by that same Parliament, wherein the erection was expedite, and so the pursuer was not his superior:—this allegiance was repelled by the Lords; and the defender ordained to produce at the pursuer's instance, as was craved by the summons, being an action wherein the pursuer alleged all the writs made to him by the priors, or since by the king, of these lands, to be false.

*Act. Hope. Alt. Stuart and Cunningham. Scot, Clerk. Vid. 25th July 1622, E. Nithisdail.*

This decision in my opinion solves not the doubt, if Sir John, or such others