

could not challenge any debt owing to him, seeing he was become himself debtor to him to whom he was creditor. Which prior debt, the Lords found, was not taken away by the foresaid posterior bond, upon any pretence that he, who was a prior creditor, needed never to have constituted himself debtor thereafter to him who was standing addebted unto him; seeing he might have allowed or defalked the preceding debt, which is probable, and presumed he did, before he gave a new bond to him who was standing his debtor before, as said is. Which presumption the Lords found not sufficient to extinguish or take away the first bond, but found that both the bonds might subsist, and that the last should only compensate the first bond *pro tanto*.

*Act. Lawtie. Alt. ———. Gibson, Clerk.*

*Page 114.*

1624. *February 27.* MAXWEL of Pollock *against* MAXWEL of Cowhill.

IN an action of reduction, at the instance of ——— Maxwell of Pollock against ——— Maxwel of Cowhill, for reduction of an heritable right of lands holden of the abbacy of Melross, upon the reason of anteriority, because the pursuer was first infeft and first confirmed,—the defender compearing, and proponing an exception that there was a submission betwixt the parties' fathers (they then being infeft in the lands,) of all controversies betwixt them, to certain judges, whereupon decret followed, by the which the right to the lands libelled was decerned to pertain in all time coming to the excipient;—this exception was not sustained: for the Lords found this decret not sufficient to maintain the defender in the right of the lands controverted, proceeding upon a submission of the tenour foresaid; for the Lords found that a submission, wherein parties submitted all controversies generally, could not be a warrant to decide the heritable right of the lands to pertain to one of the parties and to take the same away from the other party; except either the right of the lands had been especially submitted, or else that the same had been given in by the parties in their claims before the judges: and that the general clause, submitting all controversies betwixt the parties, could not be a sufficient warrant to pronounce that decret.

*Scot, Clerk. Vid. 15th December 1631, Dr Kincaid against Aikenhead.*

*Page 114.*

1624. *March 23.*

DUFF *against* KELLIE.

IN an action of double-poining betwixt Duff and Kellie,—the Lords would not sustain a disposition made by a common debtor to sundry persons, done to one who was a conjunct person, *viz.* brother-in-law to the debtor, bearing to be done for onerous causes and for satisfying of a debt owing to the receiver,—except the said party, to whom the same was made, should qualify and produce and instruct the debts, for the satisfying whereof the said disposition was made, otherwise than by the confession contained in the narrative thereof. And the

Lords repelled the allegiance, whereby the party alleged that he ought not to be compelled to produce, as said is: seeing he alleged that the party who was maker of the said disposition, and common debtor, as said is, was not a bankrupt the time of the acquiring of the disposition controverted, but was a free person, not being at the horn at that time, and who had goods and gear of his own answerable to have satisfied the other creditor contridictor, by and attour this land disposed; so that it was lawful to him to have taken that disposition, *etiam ex causa donationis*, albeit there had been no other cause of debt preceding. Which was repelled by the Lords. But the contrary hereof was decided, in the action betwixt Mark Ker and Hoppringle, by interlocutor, and thereafter was ordained to be further heard.

*Act.* Mowat. *Alt.* Davidson and Boyd. Gibson, *Clerk.* *Vid.* 20th February 1622, Young *against* Denniston; 21st February 1623, Craw *against* Irvine; 6th March 1632, L. Garthland; 22d November 1630, Mark Ker; 28th January 1625, Livingstone.

*Page* 123.

1624. *March* 27.

PAIP *against* KEITH.

IN a suspension of a decret given by the sheriff of Aberdeen betwixt Paip and Keith, decerning a bond to be registered, and payment to be made, by the defender, of the sum of money contained in the bond, which was particularly expressed in the decret, and the defender therein decerned to pay the sum;—the Lords found the decret null in that same suspension, because the obligation was not inserted *ad longum* in the sentence, albeit the substance thereof was contained therein; for the defender was but a cautioner, and the principal was not convened, and the obligation not being inserted, prejudged the cautioner of the remeid of his relief against the principal party.

*Act.* Paip. *Alt.* Davidson and Russel. Hay, *Clerk.*

*Page* 125.

1624. *March* 31.

L. RATTRAY *against* DAVID WEDDERBURN.

IN a suspension, raised by Rattray *against* Mr David Wedderburn, as assignee constituted to the liferent of an annual-rent and profit of a sum of a thousand merks, pertaining to Lord Drumloquhy his cedent,—the Lords found a liferent-right was not cessable by a cedent being at the horn the time of the making of the assignation, in prejudice of the creditor at whose instance he was at the horn: albeit the assignee alleged, that the Act of Parliament prohibiting such assignations to be made by rebels extended only to assignations of goods and gear, which were merely moveables; and comprehended not liferents, which he alleged might be assigned by a rebel, the same being given to a creditor for a just cause. Which allegiance was repelled; for the Lords found that such liferents could not be assigned in prejudice of the creditor; and this liferent was only constituted by a bond, whereby the profit of the sum was ordained