

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