

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.

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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.*

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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

to be paid to the father, during his lifetime ; but this, in heritable rights, holds not.

*Act.* Russel. *Alt.* Nairn. *Vid.* 21st March 1623, Cunningham *against* E. Glencairn ; 10th February 1624, Sir John Ker ; 27th January 1630, Ross *against* Hume.

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1624. *June* 17.

CLERK *against* BROWN.

THE Lords are in use to find decreets null, which are given by any inferior judges upon the defender's confession and consent, where the said confession and consent is not warranted by the subscription of him who gives the same, extant in the process : and find the assertion of the clerk, or his minute in the process, not authorized with the party's subscription, no warrant to pronounce decret thereupon ; except that the said confession proceed and be made after citation made to the defender to compear to give his oath of verity, before the judge, upon the libel and claim, the same being referred to his oath ; and the term circumduced. Which was found this day in the action betwixt Clerk *against* Brown, and of before in the action betwixt Doctor Jelly and John Ury.

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1624. *June* 29.

THOMAS EDGAR *against* WILLIAM HALLIDAY.

IN an action of registration of a bond made by umquhile Mr James Halliday, pursued by Thomas Edgar *against* William Halliday, as served heir to his brother,—the Lords sustained the action *against* him, as heir served : albeit it was alleged, that no action could be granted *against* the heir, while the expiring of year and day after the defunct's decease, which was not expired in this case, as was provided by the 76 Act, 6 Parl. Ja. IV. Which allegiance was repelled, in respect that the defender was served heir, by the which the liberty and time of a year after the defunct's decease, by the intention of that Act, is only granted to persons to deliberate and advise, if they will enter heirs, or not ; of the which liberty, by the said entering heir, he had prejudged himself.

In this process, also, the Lords found, that a bond bearing to pay annual, albeit not containing a clause of infestment, was heritable, and so was prestable by the heir of the defunct ; and not by the executor, of necessity, as if they were only liable.

*Act.* Lawtie. *Alt.* Craig. Gibson, *Clerk.* *Vid.* for the first part of this decision, 11th November 1624, L. Ellerslie ; 29th July 1623, Stuart *against* Fleming ; *item*, 12th March 1622, Fairlie ; for the last part of the decision, 29th March 1626, Couston *against* Stuart.

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