

1631. *July 6.* The LAIRD of CORSBIE *against* HOME, ACHESON, &c.

THE Laird of Corsbie having comprised the lands of Eccles from Sir James Home, and, being infest therein, pursued a removing against sundry persons;— Alleged by Peter Home, That he was donator to Sir James's escheat and life-rent, and had obtained declarator general thereupon: yet, in respect that he could not allege possession of the lands by virtue of his gift, and that he had no special declarator thereupon, his allegiance was repelled. Next alleged for Gilbert Acheson, That he, being a creditor to Sir James, had comprised his lands, and also had gotten assignation of his debtor's escheat from the donator, in so far as might concern the lands comprised by him, and by virtue thereof was in possession. Replied, First to his comprising: it was reduced by the pursuer *ex capite inhibitionis*; so that, although he was creditor to the rebel, yet he was not to be accounted so, in respect of the pursuer. As to his assignation, it ought to be repelled, in respect the donator had given a back-bond to the treasurer, that he should not make any assignation of his gift to any person but by the treasurer's advice; and so the assignation was null. As to his possession, it ought to be ascribed to his infestment that was reduced, and not to his right of the escheat. Duplied, The treasurer had only interest to quarrel the assignation, and none else; and he offered to procure the treasurer's consent to his assignation; and it standing good with the possession alleged, should defend him. The Lords thought that the back-bond given to the treasurer should be a part of the gift: and that it was all one as if the gift had been granted with that condition, That it should not be lawful to make assignation thereof; otherwise it should be in the donator's hand to prefer any creditor at his option. And, in respect of this reply, repelled the exception.

*Page 105.*

---

1631. *July 22.* SIR ROBERT DOWGLASS *against* WILLIAM KELLY.

SIR Robert Dowglass of Spot being heritably infest in the bailiary and chamberlainry of the lordship of Dunbar, and having cited Mr William Kelly, one of the heritors within that lordship, to his court; he raised an advocacy from Sir Robert's court, upon that reason, That his lands were given to the Earl of Holderness, his author, to be holden in free blench, and so could not be subject to any jurisdiction but that of the sheriffs; which infestment was ratified in Parliament: Likeas, he had gotten a decret of exemption from Sir Andrew Dowglass, the pursuer's author, before the Lords, 1624. When he had opposed this decret standing, the king's advocate, for Sir Robert, alleged the 14th Act of Parliament 1600, concerning the omission of the king's officers, which may be supplied by their successors, even by way of exception, to take away any deed done in his Majesty's prejudice, as he alleged this was, where the king wanted the service of a vassal he had before. Answered, *1mo.* The Act meant not of mean officers, such as chamberlains, but of officers of state. *2do.* The king had no prejudice here, for the defender was subject to the sheriff's jurisdiction, albeit he was exeemed from the bailie's. The Lords, notwithstanding of the de-

creet standing, would have Mr William to reason upon his rights. And when he alleged, He, having gotten his lands blench, could only be subject to the sheriff, and not to the king's chamberlain of the lordship, whose office is most to intermit with the rents within the lordship; and more, he was infeft *cum curiis et earum exitibus*, which, at the least, should free him from the bailie's courts, &c.;—yet, for all this, The Lords found, that unless, by his infeftment, he had been expressly exeemed from the bailie's jurisdiction, he remained still subject thereunto, notwithstanding of his blench holding.

Page 23.

1631. December 16. MENZIES of CASTLEHILL against The LAIRD of CARSHOGILL.

MENZIES of Castlehill, as heir to his father, pursued Carshogill, (for whom the pursuer's father, as cautioner, had paid 2000 merks,) upon a clause of relief contained in the bond, wherein the pursuer's father was cautioner for the defender. Alleged, The benefit of that clause of relief pertained not to the heir of the defunct, but to his executor; as was decided *supra*, (Edgar and Cant against Edgars and their Tutors, 1628, July 10.) Replied, He that was debtor could not allege that; but, if the executor were striving with the heir, he might do it. As for the defender, he was subject in payment, and could not found a reason upon another man's right; and, to free the defender of all danger, the pursuer offered to find caution to relieve him at the executor's hands, and all others. The Lords repelled the allegiance, in respect of the reply and offer of caution.

Page 69.

1632. January 17. ROBERT STEWART against JANET and RACHEL STEWART.

ROBERT Stewart convened Janet and Rachel Stewart, daughters to his brother, Mr Lodovick, as charged to enter heirs-portioners to their umquhil father. They having renounced, he craved adjudication of certain lands and acres belonging to their father. Compeared the said Rachel, one of the daughters, and alleged, That she, having convened her other sister, Janet, who was her sister-german, as heir to her father, she had renounced; whereupon the defender had intented an action of adjudication of the same tenements, &c. before the pursuer, and therefore should be preferred to him, at the least come in *pari passu* with him. Replied, The defender's decret-absolvitor, whereupon the adjudication is craved, is null, and ought not to be respected, because the said umquhil Mr Lodovick having two daughters, and apparent heirs-portioners to him, the decret is obtained only against one of them, and the said defender ought to have assigned her debt, and caused the assignee convene both the heirs, and obtain decret against them; which is not done here. Duplied, That which she might do by an assignee, she might do in her own name; and being pursued, she could not call herself, but only the other sister, *hoc attento maxime*,