

1663. *December 3.* JAMES GRANT *against* WILLIAM PHILP, MARGARET MACLAUHLANE, and ——— BROWN.

DUNCAN PHILP in Comrie parish in Pearthshire, begets on Margaret Maclauchlane a child, called William Philp, whose name he puts in a bond of 400 merks, addebted to him by James Brown in Balichargie. This William dying, the said sum was found to pertain to the king, as being fallen in his hands by reason of bastardy, escheat, or last heir; the said William having been born a bastard, and so deceasing without bairns lawfully procreated of his own body, or any lawful assignation or disposition of the said sum made by him to any, during his lifetime, or at least because the said William has none to succeed to him within the tenth degree of his generation. James Grant, servitor to William, Duke of Hamilton, *in anno* 1663, gets the gift of the said bastardy from the king, under his Highness' privy seal, and so with concurrence of the king's advocate, raises summons of declarator against the said bastard's mother, as nearest of kin, and against the son and heir of the said James Browne, granter of the bond: summoning them to compear and hear it found and declared by the Lords, that the said bond is fallen in the king's hands, gift, and disposition, by reason of bastardy; and so that it appertains now to James Grant, this pursuer, as his majesty's donator; and that he ought to be answered, paid, and obeyed thereof.

The Lords decerned and ordained the same to belong and appertain to this pursuer, conform to the desire of the summons, because of the letter of gift under the privy seal produced.

And albeit, it was alleged by the defender's procurators, that no process could be sustained upon the foresaid gift of bastardy, because he offered him to prove that Margaret Malauchlane, the alleged bastard's mother, was married to his father; at least, that he cohabited with her many years as his wife, and were *habiti et reputati* as married folks; and so the said William cannot be held a bastard:—Whereto it was REPLIED by the pursuer's procurator, that the said allegiance was noways relevant, unless he would offer to prove that they were married, and that they cohabited and dwelt together as married:—

Notwithstanding of which reply, the Lords found the allegiance made by the defender relevant, and therefore assigned him a day for proving the same; also granted him letters for summoning witnesses, or leading any such like probation, or documents to that effect; which he failyieing to do at the day assigned, the term was circumduced against him, and decret given furth in manner above written.

Sir John Fletcher compears personally. *Act.* James Abernethy. *Alt.* Mr. Jo. Rollo. *Signet MS. No. 18, folio 6.*

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1663. *December 3.* THOMAS FALCONER younger of Kincorth, and ALISONE KELLIE his Spouse, *against* PATRICK HOME of Coldinghamelaw.

BY a minute of contract and agreement betwixt Patrick Home of Coldinghamelaw, and Margaret Greirson, his spouse, on the one part, and Thomas Falconer,

younger of Kincorth, and Alisone Kellie, his spouse, on the other side, past in July, 1662; the said Patrick Home sells and dispones so much of his lands, living, and estate, as would extend to, be worth, and pay, of constant yearly rent, now, and in all time coming, the quantity of four chalders, and four bolls, of good and sufficient bear, of the old met and measure of Duns; *item*, To enter the said Thomas to the void actual and real possession of the said lands; *item*, To warrant them at all hands; *item*, To deliver him the keys of the houses on the said lands; *item*, To aid, assist, and concur with him in defence of his real, actual, and peaceable possession thereof; *item*, To extend, keep, and perfyte the said minute of agreement betwixt them on the first occasion. This minute, in January, 1663, Thomas causes registrate, and charges Coldinghamelaw with letters of horning, for not fulfilling the same; and, therefore, to pay the 1000 merks of penalty contained therein. This charge Coldinghamelaw suspends, on thir reasons: *1mo*, Because the same is altogether general, noways condescending in what particular obligation of the said contract he has failyied, seeing he is yet most willing to fulfill them all; and, therefore, till a special condescendence be made, the letters ought to be suspended; *2do*, In September, 1662, he offered to the charger a just and true rental of sundry persons, his tenants and fermorars, within his barony of Law, that have been in constant use of paying to him for their lands, four chalders and four bolls of the met of Duns; desiring him to accept thereof as the implement of the said contract; *item*, What inhibitions, comprisings, infetments, tacks, or other rights, might affect the lands offered, he was content, upon their mutual subscribing of the contract, at the sight of able and judicious lawyers, to purge the same; which the charger refusing to accept, he took instruments in Robert Pow's, a notary's hands, that he might be free of the penalty charged for: by which it appears how willing he was to perfyte the said minute, in every point thereof, and how unjustly he is now charged.

This suspension being called; for the charger, the contract registrate is produced: for the suspender, his protestation: all which being considered by the Lords, they granted commission to Home of Blacader, and Ramsay of Idinton, to try the rent of the said lands offered by the suspender, by whom they are possessed, for what farms, to clear their marches from the neighbouring lands, to consider their tacks, and for that effect to call the said parties before them, and then to report; which they accordingly did, some refusing to give their declarations upon the quantities of the lands possessed by them, and so reported. Their report the Lords found defective in the quantity of bear controverted, (there being much oats in their rental:) whereupon they grant a new commission to the Lord Justice Clerk, as knowing the lands, bounds, and parties, to cognosce upon the validity and difference betwixt the bear and the oats paid out of the lands designed; which he having seriously considered, his report was, that he found the rental of the lands offered, to want some fourteen bolls bear to complete the four chalders and four bolls bear, met and measure foresaid, for which may be allowed nineteen bolls of oats paid out of the two husband lands beside.

This report the Lords having considered, they approved of the same, interponed their authority thereto; and decern the letters of horning to have further execution, as being orderly proceeded, ay and while the suspender fulfil, perfyte, and accomplish all and hail the clauses, heads, articles, and conditions of the said

minute, as they are before deduced; as also ay and while he purge all and hail the burdens affecting the said lands to be given up in a note by the charge; [and] till which time, that the writs and evidents produced lie in the clerk's hands.

*Suspender*, Mr. Alexander Spottiswood. *Alt.* Mr. David Falconer.

*Signet MS. No. 19, fol. 6.*

1663. *December 3.* HELEN HILL *against* LAUHLANE MACLEINE of Lochburie.

MURDOCH MACLEINE of Lochburie, by his bond, binds, obliges him to content and pay to Helen Hill, relict of Jo. Maxwel, burgess in Glasgow, the sum of L.800. *In anno 1657*, she registrates the bond and raises letters of horning thereupon. He suffering himself to be denounced, she obtains letters of caption: by which having apprehended him, he grants her a bond of corroboration of the said sum, with this addition, that if he did not thankfully pay her betwixt and Martinmas 1657, that then he should enter himself prisoner immediately to the governor of Divart, and that under the pain of L.500. He neither pays it within the term of payment, nor does he enter his person, according to his engagement, but dies a little after. His brother Lauchlane Macleine serves and retours himself heir to him. Helen Hill, (who married afterwards Mr. William Weir, advocate,) she pursues Lauchlane Macleine now of Lochburie, to make payment to her of the sums contained in the bond of corroboration; and, for instructing the summons, produces the bond corroborated, the bond of corroboration, letters of horning, and caption, together with an extract of a service under the subscription of Mr. Archibald Nisbet notary, bearing Laughlan M'Laughlan, [Lauchlane Macleine?] to have been heir served and retoured to his brother, before the four ordinary maissers, in January, 1663.

All which the Lords having considered, they decerned the defender to make payment of the said bond: because, albeit, the time of litiscontestation in the said matter, it was alleged by the defender's procurator, that he ought and should be *simpliciter* assoilyied from the said summons, because he offered him to prove *paid*: which allegiance the Lords admitted as most relevant, and therefore assigned him a term for proving thereof, which he failyied to do; so that the term was circumduced against him, and protestation admitted in favours of the pursuers, and decret given as is above written.

*Act.* Mr. Robert Burnet. *Alt.* Mr. George Mackenzie.

*Signet MS. No. 20, fol. 7.*

1663. *December 5.* JOHN ARTHUR of Newton-Arthur *against* JAMES HOUDON.

WILLIAM HOUDON smith in Restalrig, by his bond, grants him to have borrowed, in 1623, the sum of L.340 from Patrick Whytlaw, burgess in Edinburgh, and obliges him to repay the same. This bond Patrick, *in anno 1624*, causes registrate, and immediately raises letters of inhibition against the said William;