

Martha Blyth is dead two years since; but if she be living, declares that this decret shall not prejudice her right during her lifetime.

All which the Lords having considered, they ordained the ground to be pointed or appraised; but always with reservation of the said Martha's liferent, if alive.

*Act.* James Abernethie. *Alt.* Mr. David Balfour, Mr. Thomas Murray.

*Signet MS. No. 91, folio 34.*

1664. *January 21.* JO. EARL of Haddinton *against* The RELICT and CREDITORS of WILLIAM GRAY of Pittendrum.

WILLIAM GRAY of Pittendrum, merchant in Aberdein, and provost thereof, dies without any body that can succeed to him in his lands or heritages; because he has none of his own body lawfully procreated; and for his father, he was a bastard, and not capable of succession. By reason thereof, his whole patrimony and estate falls in the King's hands, as last heir, heritably, and by privilege of the crown. This, his Majesty, with the advice of Jo. Earl of Crawford and Lindsay, Lords Parbroth and Struthers, his Highness Treasurer, Collector of his Majesty's augmentations of his kingdom of Scotland, and Controller of William Lord Bellenden of Brughton, his Depute in the said offices, and the rest of the Lords of Exchequer, grant, gifts, and disposes, to Jo. Earl of Haddinton; who immediately raises summons against Christian Cullen, the relict of the said William Gray, and his creditors to hear his gift declared. *Item,* To see it found that he as donatar has undoubted right to all the goods and gear whatsoever that pertained to the said William the time of his decease, and particularly to thir following; divers tenements, (all bounded,) in Aberdein; three half nets of salmon-fishing in the fords of the water of Dee; *item,* Another net, half net, and the fourth part of a net of fishing in the water of Don; and the Raick of Die, &c. *Item,* That he shall hold them in that same very fashion of the king, as they held formerly, in all their meiths, marches, and bounds, paying the same *blench* or feu farm duties they did formerly. There is produced for instructing the summons, the gift of *ultimus hæres* under the great seal.

It's ALLEGED for the relict and creditors; that no process ought to be sustained at this pursuer's instance in this cause, and that no declarator can pass upon the foresaid gift in his favour; because they offered them to prove, that the said deceased William Gray, his goodsire and goodame, were lawfully married together; and that the said William's father was gotten in lawful marriage, and, therefore, the king cannot be *ultimus hæres* upon the account the said William's father was a bastard; and so the said gift must fall and be of no avail; *Igitur* no declarator.

Which allegiance the Lords finding relevant, they assigned a term to the defender's procurators for proving the same; wherein they succumbed, so that the term was circumduced against them, and decret given forth, declaring that the said William deceased without any person to succeed him; and consequently that his lands, goods, and gear fell to the king; and that now the same pertain to the pursuer as the king's donatar; and that therefore he ought to be answered thereof; reserving always to the relict and creditors all their lawful defences upon

their several rights, for any debts, provisions, or other obligations whereby William obliged himself to them; only excludes all defences that may be proponed *contra statum personæ*.

*Act.* Ja. Chalmers. *Alt.* Sir Geo. Lockhart, Mr. David Thoirs.

*Signet MS. No. 93, folio 34.*

1664. *January 21.* THOMAS NOBLE *against* JAMES HALIBURTON.

IN 1662 Thomas Noble, merchant in Edinburgh, is infest in a tenement of land, lying in Tailfor's close, once belonging to Patrick Wood, merchant there. This seasine is under the subscription of Sir William Thomson, town clerk, and notary thereto. Then he comprises the same from George Hadden, writer in Edinburgh, and is again infest upon his comprising. Then summons James Haliburton, writer in Edinburgh, as the occupier and possessor thereof, to pay to him, as having right foresaid, the sum of 200 merks yearly, as being that which the tenement pays of maill, before the bailies of Edinburgh. James advocates the same to the Lords. At the calling of the advocation, there is produced for the raiser of the advocation, a comprising of the same lands led at his instance, whereby he claimed right to the maills and duties thereof. Then compears Margaret Hill, relict of Robert Darling in Queensferry, and craves to be admitted for her interest; who being admitted, produces a bond of corroboration granted by George Hadden, to her and her husband, in conjunct-fee, the longest liver of them two, in 1653, whereby he obliges him to infest them and the heirs of their body in the said tenement, redeemable always upon payment of 1200 merks, containing a precept of seasing and procuratory of resignation; whereupon resignation being made in the hands of Robert Sandilands, then one of the bailies of Edinburgh, new infestment was granted to her and her children thereof, as the instruments of seasine and resignation produced also testify; in respect of which writs produced, she craved to be preferred to the whole duties of the said tenement, and to exclude all others, ay and while she be completely paid.

Whereunto it was REPLIED for the pursuer, that he having apprised the said tenement, and so being a singular successor; and her seasine being only on a bond of corroboration of a former simple bond, it can be no farther extended than to the security of the principal sum of 1200 merks, and payment of the annual-rents; and so she ought to be restricted to her ordinary annual-rent.

All which the Lords having considered, they restricted her to the annual-rent of her money, (being liferentrix) and preferred her therein to the other two, to uplift the same, free of all burden. Then *secundo loco*, prefer the pursuer, Thomas Noble, to a proportional part of the superplus of the maills and duties of the said tenement; and, therefore, ordain the said Ja. Halyburton to obey them therein. Yet, because the said Ja. comprised the said tenement within year and day of the pursuer, ordain him to come in *pari passu* with the pursuer to the said superplus of the maills and duties of the said tenement, effeiring to his sum comprised for; and so declare him to have just ground of retention in his own hands, of the proportional part of the superplus, &c. he always paying his proportional part of the pursuer's expenses in leading the said apprising.

*Act.* Pat. Fraser.

*Alt.* Jo. Abernethie.

*Signet MS. No. 94, folio 34.*