

terms he pleased. THE LORDS inclined to grant it, but had no occasion, in regard the parties agreed among themselves.

No 17.

Fountainhall, v. 2. p. 449.

1725. February 3.

WILLIAM HUTTON and the CREDITORS of THOMAS WHITE *against* JAMES GRAY
Writer to the Signet.

THOMAS WHITE elder disposed to his son in his contract of marriage certain lands and tenements, with the burden of his son's paying to Elizabeth White his eldest daughter of the first marriage 3000 merks; and this burden was repeated in the procuratory of resignation and precept of sasine upon which the son was infeft. The 3000 merks were assigned by the daughter; and the creditors of the assignee having adjudged, they craved preference to the creditors of the son, upon this ground, that the burden was real, not only by the conception of the clause, but from its being repeated in the procuratory and precept, upon which the son's infeftment was taken.

No 18.

It was *answered*, That the clause being only with the burden of payment, it could have no stronger effect, than if the son, by the quality of the right, had obliged himself to pay; and therefore though it was inserted in the procuratory and precept, yet it was no real burden.

THE LORDS found, that the obligation on Thomas White younger to pay 3000 merks to his sister Elizabeth was only personal.

Reporter, Lord Cullen. Act. H. Dalrymple. sen. Alt. Ch. Binning. Clerk, Mackenzie.
Edgar, p. 163.

1751. January 29. HENRY ALLAN *against* the KING'S ADVOCATE.

HENRY ALLAN writer in Edinburgh, was cautioner for James Lord Balmerino, in a considerable sum, which he was obliged to pay, together with the interest due thereon, and with L. 7 of expense of diligence used against him. This payment was made after the principal debtor's death, and after a forfeiture incurred by his brother and heir Arthur Lord Balmerino.

No 19.

Mr Allan claimed upon the Lord Balmerino's estate. for the sums paid by him.

Answered, His claim can only be sustained for the principal and interest; but with regard to the expenses recovered against him out of the penalty in which he was bound, it is enacted, 'that no decree shall be made for any sum