

1622. *March 12.* SIR WILLIAM FAIRLIE, and JOHN FAIRLIE'S CREDITORS,
against JOHN FAIRLIE'S RELICT and his EXECUTORS.

IN the action betwixt Sir William Fairlie and umquhile John Fairlie's creditors, and John Fairlie's relict and his executors ;—the Lords found that the defunct's executor was holden to employ money upon annual-rent for the life-rent of the relict, which the defunct was obliged to do ; albeit, it was alleged, both by the executor, and also by the defunct's other creditors, to whom the defunct was owing moveable debts, that that deed was a fact of that nature, which was not prestable by an executor, but by the heir ; and that the executor of the defunct, and the defunct's moveables should be, *primo loco*, answerable for payment of the defunct's moveable debts : which was repelled by the Lords ; for it were not equitable, that, because the party provided himself of an heritable form of bond, that for that cause he should be in worse estate than they who had only moveable bonds.

Act. Peebles and Nicolson. *Alt.* Hope. Scot, Clerk. *Vid. penult.* June, 1624, Haliday *against* Edgar ; 11th December, 1632, Shaw ; 7th December 1627, Porteous.

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1622. *March 23.* LORD BORTHWICK *against* The LAIRD of GALLOWSHELLS.

THE lands of Howlatstoun, Prestoun, Brock-house, and some other lands being united by the B. of St Andrew's charter, superior of the whole lands, and of the lands of Halltree, and erected in a tenantry in favour of the Lord Borthwick, called the tenantry of Halltree ; thereafter the good-man of Gallowsheills comprises the lands of Halltree, with annexes and connexes, parts, pendicles, and pertinents, and some other of the same lands particularly which are annexed to Halltree by the said Charter of Union. In the which comprising the lands of Howlatstoun, and some others of the united lands are omitted, and not specially comprised. After, Gallowsheills resigns the comprised lands in favours of the Lord Borthwick, who is infest therein by the bishop, upon that resignation, conform to the words foresaid of the said comprising ; another thereafter takes a gift of the non-entry of the lands of Howlatstoun, which were severally comprised. Whereupon declarator being sought,—the Lords found this exception relevant to elide the non-entry, viz. that the Lord Borthwick was infest upon the compriser's resignation in the lands of Halltree, with annexes, connexes, parts, pendicles, and pertinents thereof. Which infestment and comprising of the lands of Halltree, bearing that clause of annexes, connexes, &c. the Lords found comprehended all the whole lands which were before annexed by the Charter of Union of Halltree in a tenantry : albeit that the donator to the non-entry alleged that the comprising and charter following, whereupon the exception was founded, comprehended not the tenantry ; and that the tenantry was not comprised, nor the whole lands of the tenantry, but only the lands of Halltree, and not the whole tenantry thereof, and of some special lands of the tenantry, which are specially comprised, and as much other lands of that te-