

1624. *Jan. 23, and Feb. 18.* The COLLEGE of GLASGOW *against* JANET FLEMING.

THE College of Glasgow having right to sundry penny mails of houses and yards, of old belonging to the black and white friars, pursued Janet Fleming, relict of James Stuart, there, for the sum of two merks and a half due unto them for houses at the cross of Glasgow, whereof, for the space of ten years before, they were in use of payment from the tenants and possessors of the same land. The Lords would not sustain the pursuit, unless they would say that they had received payment of the heritor of the ground, (for no deed of a tenant could affect the land with a burden in prejudice of the heritor,) or at least with the knowledge and consent of the heritor, which was sustained to be proven by witnesses.

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1624. *February 19.* FAIRHOLM *against* The HEIRS of WISHART.

A CRIMINAL action is prejudicial to a civil, and therefore must be first tried before the justice:—as was found in an action pursued by one Fairholm, as assignee constituted, by Janet Leyes, to 10,000 merks, against the heirs of Captain Wishart, by whom there was an exception proponed;—that the bond was given *propter turpem causam*, they having cohabited divers years together, being both married to other folks.

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1624. *February 19.* The LAIRD of CRAIGMILLAR *against* EDWARD EDGAR.

Patrick Edgar being addebted to Edward Edgar in 8000 merks, they transacted *anno* 1617, for 7000 merks, whereof the one-half should be paid at Whitsunday next, and the other at Martinmas following, providing, that, if he failed in payment of the same, at any of the said terms, the said Edward should be reponed in his own place. Edward, before Whitsunday, made requisition of the first half, and in August thereafter comprised. This comprising was sought to be reduced by Craigmillar, because it was unlawful, before the failie had been declared; and that he had no power to require before the first term's failie at least. Answered, That, by that bond of transaction, he became not Patrick's debtor, neither could lose the benefit of requisition which he had by the first obligation, and that requisition was not execution, but a preparation to it; so that he might as well require as arrest before the term. The Lords found this exception against the reduction relevant.

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1624. *February 24.* JAMES DONALDSON *against* ROBERT DONALDSON.

JAMES Donaldson having an action of reduction of an assignation to a bond of

4000 merks, made to his brother Robert Donaldson, by their umquhile father Mr James, as being made *in lecto ægritudinis*, the bond being heritable;—the Lords first assoilyied the defender from the byrun annual-rents, ever till the intending of the action. Next it was alleged by the defender, that the bond was made moveable by a charge the time of the cedent's health, and so might be assigned. Answered, Not relevant; because no execution had followed that charge; and furthermore, that the assignation bore not only to byrun annual-rents owing, but also for time to come; whereby he should be reputed to have past from the first charge. The Lords sustained the assignation, in respect of the charge; because, the bond being once made moveable by a charge, made the assignation following thereupon good and valid; which being once so, and nothing having followed which might frustrate it, (for the assignee might lawfully continue the payment, the right being established in his person,) except they would say, that, after the same charge, the cedent himself had received annual-rent for the term following,—these words (to come) could not prejudice the assignee.

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1624. *March 9.* The LAIRD of TOUCH *against* The TENANTS of WILLIAM HOME of HARDISMILL.

WILLIAM Home, bastard son to the late Earl of Home, being gifted by his father with the provostry of Douglass, 1611, assigned the whole byrun mails of the same to William Home of Hardismill, 1621. The Laird of Touch having obtained Hardismill's liferent, pursued the tenants for these byruns in a special declarator. Excepted, No process upon the summons till they were continued. Replied, That needeth not; because the summons depended upon the general declarator, and, besides, were privileged. Duplied, The general declarator did work no more, but only put the donator in the assignee's place, and, if the assignee could not pursue without continuation, no more the donator; especially the defenders being third persons. The Lords sustained the summons without continuation.

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1624. *March 9.* DOUGLAS of IVELY *against* The LAIRD of EAST-NISBET.

DOUGLAS of Ively having obtained the liferent-escheat of John Stuart of Coldingham, pursued a special declarator of East-Nisbet's liferent, as vassal to John Stuart. Excepted, No process upon John Stuart's liferent, because, when it was gifted by the king to Douglas, John Stuart had not been then the king's vassal year and day; so that East-Nisbet's liferent could not appertain to him. Replied, That the priory of Coldingham was erected in John Stuart's person, 1588; so that he was ever since, if not really, at least potentially, the king's tenant; and so, since no other right had intervened betwixt the erection and his sasine, (which was 1621,) it ought to be drawn back to the first gift. Which reply the Lords found relevant.

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