

1627. *December 11 and 12.* FALCONER *against* BEATOUNE.

AN assignation made by a Scots merchant, who had dwelt long in Germany, is quarrelled by the debtors, who were pursued for the sum. They alleged the assignation was null, as wanting witnesses;—to the which it was alleged, the assignation was made in Dutch, after the form used in Germany, where the cedent dwelt. The Lords sustained the assignation; the pursuer either proving the custom of the country, or finding caution to warrant the debtor at all hands. *11th December 1627.*—

In the same case, it was alleged for Beatoune, that the debt contained in his father's bond, which was heritable, and for which he was pursued as heir to his father, by the said Falconer, heir to the said assignee, could not appertain to the assignee's heir, but to her executor; because, although the bond be heritable, yet the assignation made it moveable, and, consequently, to appertain to the executors. The Lords repell the allegiance, and find, that the assignation does not alter the nature of the bond.—*12th December 1627, ut supra; and 18th March 1629, Cant against Edgar.*

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1627. *December 13.* HEBBURN *against* LEITH.

A BOND vitiated, by some appearance, in the sum, is ordained to be proven some other adminicle.

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1627. *December 13.* RAE *against* The BAILIE of LANERICK.

THE bailies of Lanerick being charged to enter one heir to a tenement of land, who was served and retoured heir to his goodsir, of the said tenement, suspend the charge; and a third party, compearing for his interest in the suspension, alleges, That the bailies cannot enter him that charged to the said tenement, because the charger's father was infeft in the said tenement, and had disposed the same to the *excipient*, who stood presently infeft therein, so that the service was erroneous in serving him to his goodsir, and missing his father, who was infeft. The Lords found the letters orderly proceeded against the bailies, upon the retour, and ordained them to enter the charger *salvo jure cuiuslibet*. And if the party who compeared for his interest, was pursued or troubled, he might defend upon his own right.

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1627. *December 13.* ANDERSON *against* GUDLENE.

A DECREET given by the commissary of St Andrew's, in time of vacance, with-

out any dispensation specified in the decret, if the same be given by not compearance, is null ; but, if it be given *in foro contradictorio*, it will stand.

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1627. December 27. ————— against —————.

A MAN, being sick, makes an assignation to his bairns of a bond owing to him, whereof intimation is made to the debtor. The cedent recovers, and charges for the sum at his own instance ;—the debtor suspends, upon a double poinding, *viz.* the father, maker of the assignation, and the bairns, who were made assignees, and the assignation intimated. The Lords ordained the father to be answered.

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1628. January 11. The RELICT of SIR WILLIAM SHARP of BANDOCHÉ *against* JOHN SHARP, Her SON.

THE relict of Sir William Sharp of Bandoche, Knight, and Sir ——— Sinclair, her spouse, for his interest, charge John Sharp, her son, and heir to his father, to fulfil her the conditions contained in her contract of marriage. The failies were ;—that seeing, by contract, her umquhile husband was obliged to infest her in the lands of Bandoche, and to warrant the said lands to be worth to her, during her lifetime, 8 chalders of victual of free rent ; and, since the decease of her husband, she has been compelled to pay taxation, and the duty of the tack of the teind, and the augmentation of 4 bolls victual, imposed by the prelate upon the teinds, whereby her rental of 8 chalders of victual was diminished. The Lords suspended the letters, *simpliciter*, for the taxations bygone and to come, which the lady liferentrix ought to pay out of the rent, except the contrary had been expressly set down in her contract ; as also, suspend the letters for the tack-duty and augmentation for all years preceding the charge ; and, in time coming, ordains John Sharp to relieve his mother for the tack-duty and augmentation.

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1628. January 11. MARK HAMILTOUN *against* JAMES BROWNE.

A CREDITOR denounces the debtor's lands to be appraised : Upon the same day, another creditor gets disposition made to him of the same lands heritably. The Lords prefer the disposition, and infestment following thereupon, clad with possession, to the denunciation, seeing no inhibition was served at the compriser's instance.

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