

No 101.

payment of the said sum to his son, to whom he is obliged to pay the same, and suspends thereupon; alleging that by the contract, he is only obliged to pay to him the same, which he has done, and so that he cannot be charged any further, seeing he is not obliged to employ, and that his son is the party who ought only to be charged to employ the same to his wife's use, who is responsible to do the same; and being charged will fulfil it. THE LORDS, notwithstanding of this reason, and of the payment made to the son, found the letters orderly proceeded against the father, aye, and while the sums were employed to the use of his son's wife in liferent, and found that he was not liberated by the said payment made to his son, in respect that the payment was appointed by the contract, to be made to his son for that end, viz. to be employed, &c. which the father should have caused to have been done, at the payment to his son, and which should have been done at Gallashiels' sight, otherwise the contract betwixt the father and the son might be easily elided in all such cases, to the prejudice of the son's wife.

Act. *Belshes.*Alt. *Scot.*Clerk, *Gibson.**Durie, p. 239.*

1628. December 16. L. GRANTON against L. COLLINGTON.

No 102.

L. of GRANTON being charged by his father-in-law, after his daughter's decease, spouse to Granton, to fulfil that part of the contract of marriage, whereby he was obliged to employ on land a sum of money, and to procure himself and his umquhile spouse infest in liferent, and the heirs gotten betwixt them in fee; the reason he suspended upon was, that his wife being dead, that part of the clause ceased, and for his own infestment, it being conceived in his own favours, he could not be compelled; and as to infesting of the heirs of that marriage, none could charge therefor but as heir to him, and none could be his heir, he living. This cause was not decided, but the LORDS inclined to judge that the suspender might be compelled to infest himself and his heirs of that marriage, as the contract bore, which being fulfilled once, such persons as might be heirs might claim the benefit of the infestment when the time fell, whereat they might seek the same by law, but the cause was not decided.

Memorandum. 1632. July 7. In a cause of the Bairns of umquhile Sir James Young, procreated of his second marriage, against the Eldest son of the second marriage; this same decision was observed, that the heirs of that marriage, as they were designed in the contract, were interpreted and sustained for bairns of that marriage, albeit they were not served heirs.

Act. *Aiton.*Alt. *Stuart.*Clerk, *Gibson.**Durie, p. 410.*