

1670. July 7. JANET TRAN *against* The LAIRD of DUNLOP.

IN a beforementioned suspension, raised at the instance of the said Janet, against the Laird of Dunlop, who had charged her upon a bond, granted by her to Robert Brown, for the sum of £1200 or thereby, to which he was assigned, upon this reason,—That her bond granted to Robert Brown, was only for liberating Allan Dunlop, her son-in-law, out of prison; who was incarcerated at Robert Brown's instance, for the like sum: and that the charger had confessed, by his oath, that he had satisfied Robert Brown, at the desire of the suspender, and upon promise to procure an assignation to Allan Dunlop's bond, whereupon Brown had led the first comprising of Allan's estate:

It was ANSWERED, That the charger, before that time, having an heritable right, from Allan, of his lands and estate for sums equivalent to the worth thereof; albeit he had confessed, that he had satisfied Brown at the said Janet's desire, yet that could not oblige him to assign Brown's bond with the comprising led thereupon, it being prior to his own right, and to his prejudice and hurt; and that he was content to give his oath, that he never intended to satisfy Brown upon any other reason but to liberate Allan, and to acquire the apprising for bettering his own security.

The Lords, notwithstanding, did suspend the letters *simpliciter*; unless Dunlop would assign the bond granted to Brown, with his apprising led thereupon, to the suspender, that she might get her relief: for they found, that Dunlop's oath was an acknowledgment that he was intrusted by the suspender to satisfy Brown, and to procure an assignation; which, in law and reason, could not be interpreted but that it was to have been procured for her behoof and relief, and not for Dunlop's behoof, who was to be satisfied by the suspender for the sums of money paid by him to Brown for the said assignation.

Page 126.

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1670. July 8. THOMAS KENNEDIE *against* COLANE, his ELDEST BROTHER, and his TUTORS.

THE deceased Laird of Colane having made a disposition of the lands of Carraway to Archibald, then his second son, with this provision,—That, in case he should succeed to his elder brother, and to the estate of Colane, that then he should denude himself in favour of Alexander, his third son, who was appointed to succeed to him in the said lands, notwithstanding of any law to the contrary; the said Archibald having succeeded to the estate of Colane, by the decease of his elder brother, and Alexander, who was substitute to him in the lands of Carraway, being likewise deceased; Thomas Kennedie, the fourth brother, being served heir to Alexander, did intent action against the said Archibald, for resigning the said lands of Carraway in his favours.

It was ALLEGED for the defenders, That he could not be decerned to resign in favours of the said Thomas; because, by the provision of his right, he was only obliged to resign in favours of Alexander, without mention of his heirs. 2d. Albeit there had been mention of his heirs, yet the defender himself being