

1752. January 9. JANET SIMPSON *against* ROBERT BARCLAY.

[Elch. No. 12, *Testament.*]

ROBERT Barclay, now deceased, having in the year 1732 made a tailyie of his estate, with a power to alter at any time, *etiam in articulo mortis*, did in the year 1734 execute a testament at Buenos-Ayres in America, whereby he bequeathed to his father William Barclay all his estate, lands as well as money, for his use during his natural life, and after his decease to his sister Jean Barclay and her heirs, and in this deed he revokes all former wills, codicils, or bequests made by him. Some days after executing this deed he subjoined to it a declaration, importing that the disposition which he had granted in favour of his sister Jean Barclay was made with the real intent that she should have his lands, and as he had no lawyer there to apply to for advice, and to make a formal disposition in favour of his sister, he thought proper to annex this declaration, that his intention might not be frustrated or diverted by any ignorance or mistake in the writing. The Lords found, *1mo*, That by the testament the tailyie in the year 1732 was revoked. *2do*, They found that the declaration subjoined to this testament was a proper deed of conveyance of the land estate in favour of Jean Barclay and her heir Robert Barclay, the defender, to the effect of obliging the heir-at-law of the testator to make up titles and denude in favour of the defender. This last point carried with more difficulty; Lord Elchies being of opinion that the first deed being clearly a testament, and the last deed relating to it, and consequently not being a separate deed, but only a part of the first, no heritage could be conveyed by it.

In support of the decision, the case of *Henderson*, observed by my Lord Stair, 31st January 1667, was quoted.

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1752. January 29. LANDALE *against* BURNS.

[Elch. No. 6, *Service, &c.*; Kaimes, No. 128 and 129; *Fac. Col.* No. 10.]

IN the year 1677 Andrew Landale got a charter of the lands of ——— to him and to his heirs, and thereafter, in the year ——— he disposed these lands to his son David Landale, with procuratory of resignation, but which procuratory never was executed, for the son, David, continued to possess upon the personal right after his father's death till the year 1719. In that year he made a transaction with the superior, by which the superior, for certain considerations, particularly a privilege of carrying off some water from David Landale's lands to his own, consented to a change of the holding from ward to feu, and granted a feu-charter to David in liferent, and his son Andrew in fee, and his heirs. Upon this charter infestment followed, and thereafter Andrew, the grandson, conveyed the lands in favour of his sisters, Ann and Margaret Burns, in prejudice of the