

sum pertaining to her who was dead, could not be so summarily executed, and that sum charged for at the instance of her heir, except the contract had been first transferred in her person, as heir. And so the charge was not sustained, except the right of the contract had been lawfully and formerly established in her person by a preceding sentence.

*Act.* Cunninghame. *Alt.* ———. Hay, *Clerk.* *Vid.* 5th July 1625, L. Drumlanrig.

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1626. *March 8.* HECTOR MONRO *against* DR KINCAID.

IN a suspension, at the instance of Hector Monro *against* Dr Kincaid, who having acquired the right of certain sums, which the said Hector was obliged to pay by an heritable bond, *viz.* the annual-rent thereof to Margaret Vaus and Mr Adam King her spouse, liferenters of the sums, during their lifetime, and, after her decease, to Margaret Mawer, fiar thereof, and, in case of her decease unmarried, to the other two sisters named in the said bond,—in the which obligation it is specially set down, that, notwithstanding of the heritable clause therein contained, the said Margaret Vaus, and her said spouse, might charge for the payment of the principal sum conjunctly, they being both in life, and, after the decease of the said Mr Adam and his spouse, that the said Margaret Mawer might charge for the same; and the right of this bond and sums being disposed to the Doctor by the said Margaret Vaus, liferenter, (her husband being dead,) and by the said Margaret Mawer, fiar;—the charges, at his instance, as assignee, were suspended upon these reasons, *viz.* in respect of the tenor of the bond, which provided that the liferenters conjunctly, they being both in life, might charge for the same, and, after both their deceases, the fiar might charge; and seeing Mr Adam King, husband to Margaret Vaus, liferenter, was dead, the relict could not charge, herself, for the principal sums, seeing the bond provided that the charges for the same should be executed by them both conjunctly, being both on life, and so the one being dead, as she could not, no more could her assignee charge therefore: And sicklike the bond provides, that the fiar should not charge while after both the liferenters' decease; so that Margaret Vaus yet living, the fiar nor the assignee could not seek the same: and, further, that the fiar, or her assignee, could not seek the principal sum, in respect of the tenor of the bond providing the sum to be paid to her, and failing of her by decease unmarried, to her two sisters; and so, she being yet unmarried, she could not assign nor dispose the same in prejudice of her other sisters:—The Lords, notwithstanding of both these reasons, sustained the charges for the principal sum, at the instance of the assignee, seeing they declared that that clause anent the not charging for the principal sum, during the life of the liferenters, was introduced in favours of the liferenter and fiar, and not set down in their prejudice, or in favours of the debtor; and, therefore, seeing both liferenter and fiar had made an assignation, the assignee having both their rights, might charge therefore, seeing the bond provided not that the fiar might not charge while the liferenter's decease, but bore *that she might charge after both*

*their deceases*, albeit in effect both the words be one; and also found, that the substitution foresaid was not any impediment which could hinder the first person, far, to transmit effectually the right of the sums in the person of the assignee, albeit she was unmarried. And therefore sustained the charges at the assignee's instance.

*Act.* Lawtie. *Alt.* Hope. Gibson, *Clerk.* *Vid.* for this last part, 14th January 1631, Helen Sharp.

This matter being called *in præsentia Dominorum*, 10th March 1626, Major Munro compearing, and claiming the sum, this same decision was allowed, and Dr Kincaid preferred, and his assignation found good and lawful, albeit his cedent died unmarried.

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1626. *March 8.* The BISHOP of DUMBLANE *against* His VASSALS.

IN an improbation, pursued at the instance of the Bishop of Dumblane *against* his Vassals, an exception being proponed for the Laird of Kers-Crawford, who was minor, that he was not lawfully summoned, because his tutors and curators were not summoned at the market-cross of the head-burgh of the sheriffdom where the minor dwelt, nor where his land lay, but at the market-cross of another sheriffdom, where neither they nor the minor had any lands or dwelling; which was alike as if they not been summoned at all, and who, if they had not been summoned, process could not be granted against the minor;—this allegiance was repelled *hoc loco*; for the Lords found that they could not, in this process, take trial where the minor or his curators dwelt, or his lands lay, and so would not receive this exception of *alibi* in this cause, but reserved to the defender his action to reduce thereupon, as accords.

*Act.* Aiton. *Alt.* Belshes. Hay, *Clerk.* *Vid.* 26th July 1625, L. Rankilor.  
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1626. *March 11.* JOHN LIBERTON *against* ADAMSON.

IN a suspension, betwixt John Liberton and Adamson, for suspending a decreet obtained by Adamson against Liberton before the town of Edinburgh, for payment of 40 pounds, referred to his oath, and, for contumacy, decerned against him,—the reason of suspension bearing, *that Liberton was not an indweller within Edinburgh, neither the time of the sentence, nor at any time before, nor sensine*; so the provost and bailies were not judges competent to him, he not being subject to their jurisdiction, and so the decreet, being *a non suo judice*, was null;—the Lords, notwithstanding of this reason, sustained the decreet, seeing it was referred to his oath, and was a matter of small moment; but prejudice to reduce the same upon that reason, *prout de jure*.

*Act.* Lermonth. *Alt.* ———.

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