

rent twenty bolls of victual since the year 1641; convening Mr Thomas M'Kenzie, as representing his father, to make payment thereof: the Lords found the defender should make up to the pursuer the six chalders of victual since the date of the summons, and not before; and found, That, in time coming, the defender should be obliged to give sufficient tenants to take the conjunct fee-lands at the rate, and therefore could be cautioner himself for other payment.

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1664. November 16. SARAH and ELIZABETH KIRKTOUNE *against* The LAIRD of HUNTHILL.

SARAH and Elizabeth Kirktoune having recovered a decret against the Laird of Hunthill, as being tutor nominated to them by their mother's testament, and having comprised his estate, and intented removing thereupon; there was a reduction, intented by Hunthill, of the foresaid decret; wherein the grounds of the confirmed testament were called for, *viz.* the nomination, and the act whereon the tutors had accepted. The Lords inclined that the testament, *ante omnia*, should be produced; and thought it might be of dangerous consequence if the assertion of a clerk should bind a tutory, and consequently an intromission and a necessity of counting; but it was waved in regard of the consequence, and the parties desired to agree.

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1664. November 17. JOHN STIRLING *against* NICOL EDGAR.

UMQUHILE Mary Home did assign the sum of 200 merks, resting to her by Nicol Edgar, to Mr William Stirling, minister of Edinburgh, for the behoof of such poor persons within the town of Edinburgh as he should think fit. The said Mary being bastard, the gift of bastardy was disposed in favours of David Home; and, by an act of Exchequer, the same was burdened with payment of the said 200 merks, of the date of the gift. Upon which assignation and gift of Exchequer, Mr John Stirling caused arrest the said 200 merks in Nicol Edgar's hands, and raised summons against him and the donatar for payment thereof; but, before Mr John could obtain payment, the gift was declared generally and specially. Whereupon there being a double poinding raised by Nicol Edgar, against the assignee and the donatar, it was excepted by the donatar, That the assignation was null, not being subscribed by two notaries, before four witnesses. To which it was answered, That the donatar could not quarrel, because the Exchequer, who was his author, had acknowledged the solemnity to be sufficient; in so far as, by an act of Exchequer, it was declared that her gift should be affected with the payment of that debt. To which it was replied, That his gift could not be affected with that debt, because it did not bear the same; and the act of Exchequer was but the assertion of one notary, being subscribed by the clerk; and the gift is passed the seals simply, without any such condition. To which it was duplied, That the act of Exchequer being passed *simul et semel* with the gift,

is equivalent as if the same had been expressed in the gift. The Lords found, That the king's donatar was not liable to the payment of the bastard's debts or legacies, unless the same were so conceived in the gift, or the donatar had given back-bond to do the same. But, in regard that this was a pious legacy, they would inquire what was the Treasurer's meaning and custom of the Exchequer in such cases.

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1664. *November 17.* The TREASURER of PAUL'S WORK *against* HARY HOPE'S DEBTORS.

HARY Hope being debtor to Paul's Work in the sum of £200, and he being fugitive for debt, there were arrestments raised in the hands of several of his debtors, at the instance of the treasurer of Paul's Work. The summons being called, there was compearance made for Mr John Harper, who had got a disposition from Hary Hope, for onerous causes, of the sums craved to be made forthcoming. It was alleged for the arrester, That the disposition fell under the statute of divorce, being *omnium bonorum*; and to a confident person, his own brother-in-law; to whom he could not make a voluntary payment, in prejudice of his lawful creditors, after having charged the debtor with horning. To which it was answered by the assignee, That his assignation was for true and onerous causes, and that he was willing to depon thereupon. The Lords, before answer, ordained Mr John Harper to produce such writs as he had, and bond granted by Hary Hope to him, for instructing the cause onerous of the disposition granted to him.

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1664. *November 18.* WALTER GUTHRIE *against* SHAW of SORNBEGG.

In competition of two rights of wadset of the lands of Threelandhill, betwixt Walter Guthrie and Shaw of Sornbegg, the Lords found that Scot's wadset, assigned to Sornbegg, was extinct by his intromissions, and therefore preferred Guthrie to the possession of the lands and tenements for his 5000 merks; and ordained him to be countable, for the superplus more than the annualrent of his money, to Sornbegg, without prejudice to him or any other right he had, conform to his contract of wadset.

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1664. *November 19.* WILLIAM MOFFET and his SPOUSE *against* ROBERT KER, her Son.

WILLIAM Moffet and his spouse, as creditors to umquhile Sir James Ker of Creillinhall, in the sum of 2000 merks, pursues Robert Ker, his son, as