

1665. *June 21.* SIR THOMAS STEWART *against* DONALD and JAMES M<sup>c</sup>LARENCE.

SIR Thomas Stewart, having obtained decret against Donald and James M<sup>c</sup>Laurence, for payment of a debt, before the commissary of Dumblane; and the decret being suspended, and reduction raised thereupon,—it was contended by Sir Thomas Stewart, that he needed not produce the bond, which was the ground of the decret, but only the decret itself; seeing the bond was produced before the commissary, and that the decret bears it.

The Lords ordained Sir Thomas Stewart to produce the bond *in secunda instantia*, notwithstanding the commissary's decret bears the same to have been produced *in prima instantia*.

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1665. *June 23.* THE PROCURATOR FISCAL of the COMMISSARIAT of EDINBURGH *against* THOMAS FAIRHOLM.

THE procurator-fiscal of the commissariat of Edinburgh having, upon general letters, charged Thomas Fairholm to confirm Alexander Benstoun's testament, it was ALLEGED for the said defender, That he had a disposition from the said defunct, and therefore needed not confirm. To which it was ANSWERED, Ought to be repelled, unless tradition had followed.

The Lords found the letters orderly proceeded, and ordained the suspender to confirm; and found all dispositions of moveables made *in lecto* null, *non secuta traditione*; without prejudice to the party in whose favours the disposition is made, to protest, that his confirmation shall not prejudice him of his right of the disposition, but that the same shall stand valid against any other nearest of kin.

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1665. *June 28.* JOHN SEATTOUN of THORNTOUN *against* ROBERT KELLY.

JOHN Seattoun of Thorntoun, being charged to make payment to Robert Kellie, of one thousand merks, as cautioner for George Seattoun of Woodhill, conform to his bond, and decret following thereupon;—the charge was suspended, and the bond craved to be reduced, upon minority and lesion.

To which reason it was ANSWERED, That it was competent and omitted.

It was REPLIED, That the process, being a suspension, competent and omitted could not be sustained; seeing suspenders may omit all reasons which they cannot instantly verify, such as this was, wherein the suspender's minority behoved to abide probation. But, *2do*. There is reduction raised of the first decret.

The Lords sustained the reason of reduction, notwithstanding of the answer made thereto, and reponed the pursuer against his own deed, in respect of his minority.

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