

1665. *February* 15. JAMES LAWSON *against* MARY LINDSAY, relict of James Cunynghame of Newhouses.

JAMES CUNYNGHAME of Newhouses, obliges him by bond in 1638, to pay to Alexander Job, his tenant, L.100. *Item*, in 1658, he grants bond to James Lawson in Templelands, for 200 merks. This James procures an assignation from the oys and executors of the said Alexander Job to the L.100 bond, and so pursues Mary Lindsay, relict of the said Ja. Cuningham, and executrix, confirmed to him, for payment-making to him of the said sums contained in the said two bonds.

It is ALLEGED for her, that no process can be sustained against her for the L.100 in Alexander Job's bond, because granted before the act of Parliament 1641; and, therefore, till an heir be served and retoured to him, the pursuer can have no interest thereto.

Whereto it was ANSWERED for the pursuer, that he insisted not *pro loco et tempore* for the said principal sum while the heir were served, but craved sentence for the annualrents thereof preceding Job's decease.

Whereunto it was REPLIED for the defender, that she must be assoilyied from the annual-rent, as also from the other bond, because offers to prove paid.

This the Lords found relevant, to be proven *scripto*: a day is assigned for that effect: her procurators failed, so that the term was circumduced against her, and she decerned her to pay the annualrents of the first bond, with the principal sum and annualrents owing of the other.

*Act.* Mr. Thomas Lermonth.

*Alt.* Mr. Jo. Cunynghame.

*Signet MS. No. 65, folio 61.*

1665. *February* 15. JAMES NASMYTH *against* GEORGE STEWART of Auldhame.

JAMES HOME of Bonprie being denounced to the horn in January 1662, his liferent estate fell; the gift whereof Mr. Ja. Nasmyth, writer in Edinburgh, procures on the 2d of July, 1662; gets it past the seals on the 3d day of July. Then intents a general declarator of his gift. Compears, Geo. Stewart of Auldhame, advocate, for his interest; craves to be admitted; and for instructing his interest produces a gift of the same escheat dated in March 1662, sealed the 14th July, 1662; *item*, an instrument under a notary's hand, bearing Nicoll Somervell, servitor to the said George, to have several times required the said signature from Mr. William Burnet, keeper of the register of signatures, but could not get the same, and therefore protested for cost, scaith, &c. he might sustain thereby; *item*, a summons of general declarator of his gift, at the said George his instance. Then alleged, that, since he had the like declarator with the pursuer, and had done the first diligence before him, he ought to be preferred, at the least he was content that a general declarator might pass for them both together of one date, seeing his composition was first paid: and craved that each party's defences might be reserved in the special declarator.

Whereunto it was REPLIED,—That albeit George Stewart's gift was prior in date to the pursuer's, yet the pursuer's was expedite before it; and the summons