

1693. November 7. ————— KENNOWAY *against* GEORGE MONTEATH.

IN the competition between Kennoway, in Lithgow, and George Monteath, for a sum in Sir Robert Miln of Binny's hand; the Lords preferred the fiar of the sum to Monteath, who was assignee constituted thereto by her father, who, as he was liferenter of the sum, so he was administrator of the law to her, being then minor: and though he had right to uplift, yet the debtor ought to have seen it reëmployed in the terms of the first destination; and, though it was assigned by him, yet, being still in the debtor's hand unuplifted, she was preferable; though he offered to prove his assignation was granted for an adequate onerous cause. If it had been paid to the assignee, then the debate would have arisen on the *bona fides*, and the prevention of diligence; but it determined the Lords much that it was yet entire. And Monteath urged, that lately the Lords had found, in the case of Inglis and Dicks *against* Hays, that a tutor might innovate the pupil's securities, by rendering that sum heritable, which, at the time of the defunct's decease, was moveable, *et è contra*, though it disappointed the succession. But that differed *toto cælo* from this; seeing, there, it was only an act of administration, and did noways prejudice the minors, which this does.

*Vol. I. Page 566.*

1693. November 8. PATRICK WARDLAW of WESTERTON *against* MARGARET PATERSON, Lady Blackcastle.

IN the complaint given in by Patrick Wardlaw of Westerton, *against* Margaret Paterson, Lady Blackcastle, the Lords reponed him *against* the act, he paying immediately the £9 of expenses formerly modified; and allowed him to adduce witnesses to prove it was a separate tenement, and not part and pertinent of her land, which she had adjudged; with this quality, that it should not stop the advising of her probation when it should come in by the course of the roll; and allowed her, *medio tempore*, either to adduce new witnesses or reëxamine the same, as she pleased: but refused his desire of examining them upon the ground of the lands; seeing this was no perambulation about meiths and marches, and they could give their *causa scientiæ* as well at Edinburgh as there, and that the pursuer's witnesses were brought to town; and therefore he, after an act extracted, ought not to be indulged that favour.

*Vol. I. Page 567.*

1693. February 10, and November 9. MR CHARLES MACKINNON *against* BETSON of PITKENNY and the other CREDITORS of JOHN MACKY of Donloch.

THE Lords sustained the tack set by a husband to his wife, though *inter conjunctas personas*; she proving that her husband, at that time, had a sufficient visible estate for satisfying his debts *aliunde*.

In this case a decision was cited, Dury, 25th March 1628, Blackburn.

*Page 558.*