

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.

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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.

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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.

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November 9.—Betson of Pitkenny, and the other creditors of John Macky of Donloch, mentioned 10th February 1693, gave in a bill against Mr Charles Mackinnon, assignee by Macky's relict, reclaiming against an interlocutor sustaining her additional jointure against the creditors' reduction on the Act of Parliament 1621, as in defraud; in respect of this answer, that, at the time of setting that tack, he was responsal, and able to have paid all his debts. Which the Lords sustained and admitted to probation; seeing, by debts afterwards contracted, he became insolvent, and that it ought to be a visible estate, not only at the time of the tack, but also at his death; especially seeing *donationes, stante matrimonio*, were unfavourable, and revokable, not only by express and explicit deeds, but even by tacit ones.

And, therefore, the Lords ordained that point to be farther heard in their own presence, if the contracting posterior debts, so as to render him insolvent, would amount to a revocation, though he had an estate sufficient to bear all at the time of his giving that additional provision to his wife.

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1693. *November 10.* SIR WILLIAM CUNNINGHAM of CAPRINTON *against* SINCLAIR of MAY.

ON a bill given in by Sir William Cunningham of Caprinton, and other creditors of Sinclair of May, bearing, That he retarded the roup of his estate, by hindering his tenants to depone for constituting the rental, and therefore offering to refer it to his own oath,—the Lords, for preventing all collusion in making a false rental either too high or too low, first caused intimate it to the creditors; and, if none objected, they inclined to take his oath thereanent; and, if he declined, then to hold him as confessed on the rental given in; or to give the creditors a new commission to prove, in their option.

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1693. *November 11.* SIR JOHN SINCLAIR of LOCHEND *against* _____.

SIR John Sinclair of Lochend, pursuing _____, for a debt, and they referring to his oath that some of it was paid; he deponed that he had got some annualrents, but knew not how much, not having marked it by any writing beside him; but that he gave a receipt, and he is content to allow whatever they produce.

The Lords, not knowing what to make of this oath, decerned against the debtor for the whole, (seeing he did not produce any partial receipts;) but ordained Sir John to find caution to repay what afterwards they should instruct he had got, by receipts under his hands, with annualrent from the payment.

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