

1710. *July 18.* WILLIAM SINCLAIR of Roslin, and JAMES SINCLAIR, one of the Clerks of the Bill-chamber, his Tutor, Supplicants.

THE Lords, in a reduction at the instance of William Sinclair and his tutor, against Andrew Wauchop of Niddery, reduced an assignation, granted by the deceased Alexander Sinclair of Roslin, the pursuer's father, to the defender, of 12000 merks, resting to the cedent by George Lockart of Carnwarth; and declared the same to belong to the pursuer, as the cedent's nearest protestant relation, in the terms of the act of Parliament for preventing the growth of popery; to whom [they] ordained it to be given up, to be cancelled. In respect the pursuer having offered to prove, by the defender's oath, that the assignation was granted to him in trust, to the behoof of the congregation *de propaganda fide*, or some popish society; the term was circumduced against him, and he was holden confest for refusing to depone.

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1710. *July 27.* MARGARET HAY, and WILLIAM CARUTHERS, Merchant in Edinburgh, her Husband, *against* Doctor JOHN HAY, her Father.

DOCTOR JOHN HAY having, in his contract of marriage with his first wife, in case there should be but one daughter of the marriage, and he should have a son of any subsequent marriage, to debar her from succeeding to 20,000 merks, provided to the Doctor by the deceased Sir John Nisbet of Dirletoun; obliged himself to pay to that daughter 4000 merks, at her marriage or majority, and other 4000 merks after his decease, with annualrent from the respective terms: Margaret Hay, only child of that marriage, with the concurrence of her husband, pursued her father (who was married a second time, but had no son,) for payment of the first 4000 merks. Who alleged that the same being only payable *sub conditione*, in case he shall have a son to exclude his daughter from Dirletoun's money; payment cannot be sought till the condition exist, by his having a son: as is observed by Dirleton, *Decision 172, Ramsay contra Carstairs.*

REPLIED for the Pursuers,—Had it been the meaning of parties, that the daughter should claim nothing from her father, till it appeared whether he would have a son surviving him, the whole 8000 merks should have been payable only at his death: whereas the making her marriage or majority the term of payment of 4000 merks, and suspending the payment of the other 4000 merks till the defender's death, clearly entitle the daughter to exact 4000 merks presently, seeing she is both major and married. The decision betwixt Ramsay and Carstairs doth not meet the present case; because, there, the whole 20,000 pounds was payable to heirs-female at one term, viz. Their age of fifteen, in case they were excluded by heirs-male of the same marriage; and both the parents were alive at the time of the pursuit at the instance of a daughter; so that there was then a possibility, not only of heirs-male, who would have excluded her, but also of more daughters, who would have diminished her claim.