

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.

DUPLIED for the Defender,—Although the term of payment of the first moiety be come, it remains suspended till the condition exist, which is adjected to the obligation itself; and the daughter's marriage, or majority, was only made the term of payment, that annualrent might be due from that time, if the condition shall thereafter be purified. At least, the defender cannot be obliged to pay the first 4000 merks presently, unless the pursuers find caution to restore the same in case they succeed to Dirletoun's money.

The Lords found the 4000 merks due to Margaret Hay, with annualrent thereof since her marriage; and decerned the defender to make payment thereof at the term of Martinmas next, upon the pursuer's finding caution to restore it in case she succeed to Dirletoun's money.

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1710. *July 27.* [ANENT BILLS for GRATIS WARRANTS.]

THE Lords ordered the names of the advocates and writers for the poor to be inserted in all remits to them upon bills for *gratis* warrants. *Page 437.*

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1710. *Dec. 13.* SIR WILLIAM CRAIGIE of Gairsey *against* Sir ALEXANDER DOUGLASS of Egleshaw, and other Freeholders of Orkney.

SIR WILLIAM CRAIGIE pursued Sir Alexander Douglass, and other freeholders of Orkney, to make payment of L9600 Scots, due to him for his fees as commissioner for the stewartry of Orkney to the several Parliaments betwixt the years 1681, and 1702, mentioned in a certificate of his attendance, under the hand of one of the clerks of Parliament.

ALLEGED for the Defenders,—All the inhabitants of the isles of Orkney and Zetland, erected by the Act of Parliament, 1669, into one stewartry, being liable for their proportions of the pursuer's fees, and none of the heritors of Zetland being cited; no process can be sustained against the defenders, till all parties having interest be in the field, that it may be known what every one's proportion is.

REPLIED for the Pursuer,—He was not bound to cite any heritors of Zetland, seeing none of these signed his commission, and he could not know that they had any interest in electing a Commissioner for Orkney: but the defenders must cite them, instruct their capacity to vote in such elections, and their being liable to commissioner-fees, and produce their valuations, before they can pretend to any proportionable deduction upon their account. Besides, the valuations of Orkney and Zetland, in order to proportion the cess, were distinguished by order of the treasury in the year 1693; and Orkney made to pay two parts, and Zetland a third: And the pursuer insists against the defenders only for two-thirds of his fees.

The Lords found, That Orkney and Zetland being one stewartry, the pursuer must call the freeholders of both Isles, and prove their valuations, so as each may be liable only for their own share. For it was thought that the valuations, in