

1752. *July 24.* JANET LUNDIE, of that ilk, *against* MRS WILSON.

IN 1696, James Lundie of Lundie got a gift of his estate as forfeited, by the attainder of E. Melfont, his father, and was infeft, and after his death, his brother Robert served heir to him, and was infeft and possessed 17 years till 1716. But after his death, his son John was advised that E. Melfont had only a liferent, and that the fee was in Sophia his grandmother, and therefore liable for Robert's debt on the act 1695. Alleged, that he possessed as donatar to his father E. Melfont's forfeiture, who had only a liferent, and during whose life he had no right to possess as apparent-heir of his mother. Answered, The act does not distinguish *quo titulo* the apparent-heir possesses, if he possesses as proprietor, and thereby induces creditors *bona fide* to trust him, insomuch, that the purchasing that gift was by another clause of the same act a passive title in Robert, subjecting him to Sophia's debts, as if he had served heir to her; and the case would have been the same if he had purchased an adjudication or any other right of property. I repelled the defence and sustained the passive title. But on reclaiming bill and answers, the Lords altered the interlocutor, and in respect of E. Melfont's right of liferent, found that Robert's possession during the Earl's life, did not subject the next heir passing by Robert to his debts; but remitted to me to enquire whether Robert had possessed three years after the Earl's death. (See DICT. No. 91. p. 9749.)

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1753. *January 23.* TRAILL *against* FEA.

FEA of Clestron being married to the apparent-heiress of Buchanan of Sound, who had two old apprizings of the lands of Woodwick and North Ronaldsay, in Orkney, but which had been reduced in 1679 by Nisbet of Carphin, whereupon he attained the possession, but a reduction reductive had been raised and insisted in 1690;—and James Traill being desirous to purchase the lands from Carphin, but afraid of being brought to trouble by these two old apprizings, Clestron, to encourage him to make the purchase, in 1724 granted an obligation that he and his wife should grant a trust-bond in order to adjudge the lands from her, and to convey under certain conditions the adjudication to James Traill, “*Proviso*, that their granting “ the trust-bond and conveying the adjudication, should not involve them “ in any passive title as representing Buchanan of Sound.” James Traill made the purchase in 1727, and is succeeded in it by Traill of Westness; but Clestron, to avoid his obligation, confirmed his wife executrix to

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