

1622. *March 12.* SIR WILLIAM FAIRLIE, and JOHN FAIRLIE'S CREDITORS,
against JOHN FAIRLIE'S RELICT and his EXECUTORS.

IN the action betwixt Sir William Fairlie and umquhile John Fairlie's creditors, and John Fairlie's relict and his executors ;—the Lords found that the defunct's executor was holden to employ money upon annual-rent for the life-rent of the relict, which the defunct was obliged to do ; albeit, it was alleged, both by the executor, and also by the defunct's other creditors, to whom the defunct was owing moveable debts, that that deed was a fact of that nature, which was not prestable by an executor, but by the heir ; and that the executor of the defunct, and the defunct's moveables should be, *primo loco*, answerable for payment of the defunct's moveable debts : which was repelled by the Lords ; for it were not equitable, that, because the party provided himself of an heritable form of bond, that for that cause he should be in worse estate than they who had only moveable bonds.

Act. Peebles and Nicolson. *Alt.* Hope. Scot, Clerk. *Vid. penult.* June, 1624, Haliday *against* Edgar ; 11th December, 1632, Shaw ; 7th December 1627, Porteous.

Page 20.

1622. *March 23.* LORD BORTHWICK *against* The LAIRD of GALLOWSHELLS.

THE lands of Howlatstoun, Prestoun, Brock-house, and some other lands being united by the B. of St Andrew's charter, superior of the whole lands, and of the lands of Halltree, and erected in a tenantry in favour of the Lord Borthwick, called the tenantry of Halltree ; thereafter the good-man of Gallowsheills comprises the lands of Halltree, with annexes and connexes, parts, pendicles, and pertinents, and some other of the same lands particularly which are annexed to Halltree by the said Charter of Union. In the which comprising the lands of Howlatstoun, and some others of the united lands are omitted, and not specially comprised. After, Gallowsheills resigns the comprised lands in favours of the Lord Borthwick, who is infest therein by the bishop, upon that resignation, conform to the words foresaid of the said comprising ; another thereafter takes a gift of the non-entry of the lands of Howlatstoun, which were severally comprised. Whereupon declarator being sought,—the Lords found this exception relevant to elide the non-entry, viz. that the Lord Borthwick was infest upon the compriser's resignation in the lands of Halltree, with annexes, connexes, parts, pendicles, and pertinents thereof. Which infestment and comprising of the lands of Halltree, bearing that clause of annexes, connexes, &c. the Lords found comprehended all the whole lands which were before annexed by the Charter of Union of Halltree in a tenantry : albeit that the donator to the non-entry alleged that the comprising and charter following, whereupon the exception was founded, comprehended not the tenantry ; and that the tenantry was not comprised, nor the whole lands of the tenantry, but only the lands of Halltree, and not the whole tenantry thereof, and of some special lands of the tenantry, which are specially comprised, and as much other lands of that te-

nantry omitted out of the comprising, whereto the comprising under that clause of annexes, &c. could only be extended; seeing that clause could only be interpreted, and extended to the pertinents of the special lands enumerated in the comprising, and the other lands omitted out of the comprising could not be drawn in under the same. Notwithstanding of the which answer, the exception was sustained; and the Lords found that the lands of Halltree, with the annexes, &c. thereof, being comprised, was all alike as if the tenantry wholly had been comprised; and therefore found the infeftment extended to the whole, and so purged the non-entry of the lands acclaimed, which were a part of the tenantry.

Act. Belshes. *Alt.* Oliphant. *Gibson, Clerk.* *Vid.* 16th Jan. 1623, Mr Hary Aitkine, where this concerning Union was thereafter otherwise decided by the Lords. *Page 23.*

1622. *July 2.*

CARMICHAEL *against* LERMONTH.

IN an action of declarator of liferent of some lands which were holden by one Lermouth of the Laird of Kilspindie, and pursued by Carmichael, donator constitute by the Laird of Kilspindie;—the Lords found that this summons needed not to abide continuation, seeing the donator produced a sasine to verify that the superior, viz. the Laird of Kilspindie, was infeft in the land, and that there was no other necessity to prove any more that a continuation might appear to be requisite; for that part of the summons, that the defender held the lands of Kilspindie, needed not be proven, seeing he might disclaim him to be his superior:—and so found, that the action needed not be further delayed by continuation. And this is contrary to the decision made, 22d November, 1621, in the action, L. Muckall against Robert Stuart; but the Lords declared in time coming they would decide, where the like question occurred, conform to the last decision, viz. that, in such cases, there should be no continuation where the superior's sasine is shown, and the defender to be year and day at the horn.

Act. ———. *Alt.* ———. *Hay, Clerk.* *Vid.* 23d June 1625, Lo. Stormonth; 6th March, 1624, Dowglass; 24th March 1632. L. Lochinvarr. *Page 28.*

1622. *July 24.* The LAIRD of LAGG *against* The BAILIE of HALLYWOOD.

IN an action of double poinding, betwixt the Laird of Lagg, as Sheriff of Dumfries, and the Bailie of Hallywood, for an unlaw of blood, the Lords preferred the bailie to the sheriff, because the bailie's decret was given before the sheriff's; albeit the sheriff had done the first diligence, by the first citation and first process; by reason the bailie's decret was long before the sheriff's, as said is.

Act. Belshes and Cunningham. *Alt.* ———. *Gibson, Clerk.*

Page 33.