

## TESTAMENT.

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1605. *June 21.* JACK *against* GOURLAW.

JACK and his wife pursued one Gourlaw, heir to umquhile Gourlaw, for his bond to ware 2000 merks upon land, to the effect that she might be infest in liferent therein, according to her umquhile husband's obligation made to her, in the month of November, 1601. It was excepted, That the obligation was null, because it was made in the defunct's testament, and consequently could not bind the heir, but was null in law. It was answered, That albeit the obligation was in the testament, yet it was not made upon the defunct's death-bed, it being true, that he being a mariner, he made thereafter many voyages forth of the country, and died upon the coast of Spain, in December, 1602, and so the bond contained all the tenor of a lawful bond for giving infestment, and lawfully subscribed between notaries, before sufficient witnesses, the adhibiting of a nomination of an executor to the same could not prejudice the effect of the bond. Notwithstanding whereof, the Lords found, That the obligation could not give action, because it was contained in the testament.

No. 1.

A bond by a husband, engaging to purchase land, and infest his wife in liferent, found null, because included in his testament.

*Haddington MS. No. 836.*

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1606. *December 26.* LORD LINDSAY *against* LAIRD OF PITMILLIE.

The umquhile Laird of Pilrig being obliged, by contract, to infest my Lord Lindsay in an annual-rent of 1000 merks, and to pay him, as well not infest as infest, under reversion of 10,000 merks, and my Lord Lindsay understanding that

No. 2.

Executor may be burdened in a testament to pay heritable debts.