

1633. *January 29.* HELEN and JOHN DAILLS *against* JOHN MACKISON and EUPHAM HARLAW.

HELEN and John Dails pursue Eupham Harlaw, as executrix to umquhile Barbara Harlaw, her sister, relict of umquhile John Daill; and John Mackison, spouse to the said Eupham; to pay to ilk one of thir two pursuers the sum of 100 merks and a pair of plaids worth ten pounds, addebted to the pursuers by umquhile John Daill, husband to the said Barbara Harlaw; and which sum, the said Barbara, immediately after her husband's decease, promised to pay to the pursuers; and therefore they craved the same against the said Eupham, executrix to the said Barbara, her sister, who made the said promise; and against John Mackison, her husband, for his interest. The defender alleging, that the said umquhile Barbara, her sister, alleged maker of the promise, was executrix to her husband, alleged debtor to the pursuers, who, after the alleged time of her promise, had obtained sentence of exoneration and a sentence against the creditors of the said umquhile John Daill her husband, wherein thir parties were called and compeared, and other creditors preferred to them, and they found not creditors to her husband; so that that sentence being given against them, at which time they might have claimed the benefit of the promise, and did not, nor at no time thereafter during her lifetime, she living two years thereafter, or thereby, they cannot now come back, after her decease, to prove this promise against her executrix; especially to be proven by witnesses. The Lords found this allegeance relevant, in respect of the said decret of exoneration, given against the pursuers compearing; they never pursuing the defunct nor her husband while they lived; except that they would prove the promise by writ:— and it was not respected, what the pursuers alleged and replied, that that decret exonerated her only of her office of executry; *quo nomine* this sum is not sought, but only upon the ground of her promise, which cannot be prejudged by that sentence; and, in respect of the smallness of the sum, *viz.* as if there were two libels for one hundred merks ilk one, they contended that the same was probable by witnesses. Which was repelled, as said is.

*Act.* ———. *Alt.* Burnet. Hay, Clerk.

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1633. *January 31.* HAMILTON of SHEILLS *against* The TENANTS of MILNHOUSE.

A DECRET of removing given against the tenants, *in foro contradictorio*, in November 1632, being suspended upon a reason of a tack set to the defender's father for terms yet to run, to whom they were apparent heirs; which they proponed as *noviter veniens ad notitiam*, and offered to make faith thereon, and qualified the cause of their probable ignorance thereof, *viz.* that one of the decerned tenants, being one of the daughters and apparent heirs of the tacksman, who was in Ireland the time of the sentence, and yet is there, had and hath the tack foresaid in her keeping; whereupon one of the parties present made faith, and sware the verity thereof, and that she never knew the same but since the