

1662. *June.* WILLIAM BAILLIE *against* The HEIR and EXECUTOR of JOHN JAMISON.

By a minute of contract, betwixt William Baillie and umquhile John Jamison, William is obliged to dispone a tenement of land to the said John, his heirs and assignees ; for which, John obliged himself, his heirs and executors, to pay to William 3300 merks. The said William pursues the relict as executrix, and the heir of the said umquhile John, for payment of the price. It was alleged by the relict, That she and her child, the heir, were willing to pay the money upon a disposition of the land to her in liferent, and to the heir in fee ; and the reason why she should be liferenter is, that the price being the greatest part of her husband's estate, and lying moveable by him, she would have had the third part thereof as relict, if her husband had not been obliged to pay the same as the price of the lands : her liferent thereof is scarce a recompense for loss of her third. It was answered, That the allegiance is not relevant *hoc loco*, but she may *agere* against the heir. The Lords found the allegiance not relevant *hoc loco*, and inclined to think, that, if she were pursuing the heir, she should only have a terce of the land, just as if her husband had been infest therein.

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1662. *July.* The MASTER of GRAY *against* STEPHEN BRUNTFIELD.

ROBERT Stewart, provost of Linlithgow, *in anno* 1624, gives bond to Alexander Glen for £151, which was assigned to umquhile William Gray, merchant ; and transferred by the Master of Gray, as his executor, to Stephen Bruntfield ; who having pursued Robert before the English Judges, there was a defence proponed, *viz.* That Alexander Glen, the creditor, being debtor to umquhile Alexander Reid, goldsmith, the said Alexander Reid did arrest the said sum in the hands of the said Robert Stewart, and thereupon recovered sentence against him, the said Alexander Glen being called, and that long before the assignation made to the said umquhile William Gray, at least after the intimation ; which defence was found relevant. And now the said Stephen Bruntfield raises a review, and alleges, He got wrong by sustaining the foresaid defence, and not being relevant, unless the defender had also alleged payment ; and that sentence being obtained against the said Robert Stewart, he ought to have suspended upon double poiding. It was answered, That the defence was justly found relevant, and the English Judges did no wrong ; because, Glen being clearly denuded by the said sentence recovered against him, at the instance of Reid, and the defender constituted debtor thereby, it clearly excludes any posterior right made by Glen ; especially considering, that now, after so long time, the defender has truly lost his discharge granted to him by Reid ; and so it were most unjust he should be troubled by a party who has no right : and though, oftentimes, sentences prior and posterior, or assignations, are all suspended by the debtor against whom the same are recovered ; yet, where the sentence is not only recovered against the party in whose hands the sum is arrested, but also against the debtor, for his interest, there is, in this case, no necessity of a