

1613. *July 2.* LADY INNERLEITH *against* The BISHOP of GLASGOW.

**No. 91.**

The executor in a testament being one of the instrumentary witnesses, the deed was found void as to his nomination, but not in other respects.

In an action of reduction pursued by the nearest of kin of umquhile Marion Crichton, Lady Innerleith, against the Bishop of Glasgow and remaining executors, for reduction of the Lady's testament, the Lords assoilzied from the first reason, which was founded upon the alleged fraud used by Thomas Young, on making the Lady give command to the notary to subscribe the said testament unread, against her express command, given by her to the said Thomas Young, whereby she ordained him to direct the executors to divide her hail goods among her brother's and sister's bairns, which was offered to be proved by the witnesses inserted in the testament.

*Item*, The Lords assoilzied from the second reason, whereby the testament was quarrelled of nullity, as wanting a sufficient number of witnesses; in respect Thomas Young was witness, and was executor nominated, and so could not be witness; in respect the said Thomas had subscribed witness, and had renounced after the decease of the Lady, and when the party could have quarrelled the renunciation. It was found by the Lords, that the testament was null, in so far as he was nominated executor, and so he might be witness to the rest, et sic quod testamentum pro una parte et non in totum; and yet the Lords found, that if it might be proved that Thomas renounced post tractatum, et accepta prælia, the testament to be null, which part was referred to the executor's oaths.

*Kerse MS. f. 126.*

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1614. *June 22.* MONCUR *against* MADDEL.

**No. 92.**

An exception being proponed against a decree-arbitral, That it wanted witnesses, the Lords found, That there being four Judges subscribing, they might be witnesses to each other, as in charters subscribed by a convent.

*Kerse.*

\* \* This case is No. 39. p. 644. *voce* ARBITRATION.

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1619. *July 2.* LAIRD KELLY *against* INNES.

**No. 93.**

Postscript in a tack after witnesses found null by the Lords as wanting witnesses.

*Kerse MS. f. 49.*