

1629. *March 20.* JAMES WEEMS *against* JEAN MACKGILL and WILLIAM GOURLAY, her HUSBAND.

By contract of marriage between William Gourlay of Kincaig and Jean Mackgill, Thomas Gourlay, father to William, obliges himself to infest her in the Sunny-half Lands of Kincaig; and also to warrant and defend her, during her lifetime, from payment of any teinds of that part wherein she was to be infest, except the tack-duty, he being himself tacksman of his whole teinds: And, in case her husband should decease before his father Thomas, she set a back-tack to Thomas during his life, of the same lands, for payment of five chalders victual and 300 merks, as a duty for both stock and teind; conform whereunto Thomas possessed all his time, for the space of fifteen years, for payment of that duty. The said Thomas, before his decease a year or two, makes James Weems assignee to his tack of the teinds; upon which the assignee served inhibition against Jean and her husband, the laird of Finmouth, and pursued a spuilvie. Alleged, That obligation in the contract of marriage, and her possession conform. Replied, It was only personal, and could not strike against a singular successor. Yet the Lords found the exception relevant, in respect that contracts of marriage are favourable; the true meaning whereof was to be looked into.

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1629. *June 26.* WILLIAM ROBERTSON *against* MARGARET DALMAHOY.

WILLIAM Robertson, as assignee constituted by James Traquair, brother and heir to umquhile Robert Traquair, husband to Margaret Dalmahoy, pursued the said Margaret as intromissatrix with certain moveable heirship, libelled belonging to Robert, and in his possession the time of his decease. Alleged, She could not deliver the heirship libelled, because the defunct, whose heirship is craved, had two children that lived long after their father, whom she entertained all their lifetime, having no other means to do it upon but the said heirship. Replied, Not relevant against the pursuer, who is assignee by the heir; likeas the defender alleged no right proceeding from her bairns, who were never served heirs to their father; and, as for their entertainment, it should be imputed to her motherly piety; and she could not have retention of the heirship libelled, especially they being yet extant. The Lords sustained the exception.

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1629. *June 27.* The LAIRD of CARNOUSIE *against* The LAIRD of MELDRUM.

IN an action between the Laird of Carnousie and the Laird of Meldrum, Carnousie gave in a supplication, showing that he had summoned certain witnesses to depone in that cause, who were servants to Meldrum, whom he could not get to compear for fear of their master, albeit he had used his whole diligences