

1637. *February 9.* CAPTAIN OGILVIE *against* THOMAS SCOTT.

IN a contract or charter-party made betwixt Captain William Ogilvie and James Ogilvie, his brother, on the one part, and Thomas Scott, skipper in Dundee, on the other part, whereby the said skipper hired his ship to transport the said captain and his men to Buxtiehow, on the Elbe;—after their embarking, when they were within 20 leagues of the said port, by a contrary tempest the ship and men were driven back and forced into Norway, where the captain landed his men; and because that ship was leck, he freighted another ship in Norway, and registered his charter-party, and charges the skipper to refund him the freight and the damage and interest he had sustained. It was alleged, That thir failyies could not be declared by way of charge, but must be pursued by an ordinary action. The Lords permitted the pursuer to turn his charge in an ordinary action.

*2d MS. Page 48.*

1637. *February 9.* MR JOHN GALBRAITH *against* JOHN LENNOX.

MR John Galbraith, minister at Bothkenner, arrests, in the hands of John Lennox, elder, of Burnshogle, the sum of 800 merks, less or more, addebted by him to Andrew Galbraith, debtor to the said Mr John in a certain sum of moneey; and obtains decret before the sheriff of Stirling, to make the sum forthcoming, upon the said John Lennox his confession, *viz.* that he was addebted in no other sums of money to the said Andrew Galbraith but in the sum of 800 merks, promitted by the said John Lennox to the said Andrew, in tocher-good with his daughter, spouse to the said Andrew, conform to a contract of marriage: whereby the said sum is appointed to be employed for annualrent to his daughter and her spouse, and the heirs to be gotten betwixt them; which failing, the half of the tocher to return to John Lennox younger, brother to the said daughter. This decret of the sheriff's is suspended upon iniquity, as given unjustly, decerning simply John Lennox to make forthcoming the said tocher-good to the pursuer; whereas he should have been decerned only conform to the contract of marriage, and his confession relative thereto. The Lords found the letters orderly proceeded; the minister finding caution to make the sum to be received by him forthcoming to the said Janet Lennox and her brother, conform to the contract of marriage.

*2d MS. Page 49.*

1637. *February 13.* ——— *against* PATRICK HEPBURN.

PATRICK Hepburn, son to the deceased George Hepburn, and oye to the deceased Patrick Hepburn of New-milns, is pursued as lawfully charged to enter heir to his father and goodsire, for implement of the contract of marriage passed betwixt his father and mother. He renounces to be heir to his goodsire, and