

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

alleges, That, by the same contract of marriage, his father was infeft in fee by his goodsire, and so is not obliged to perform any part of that contract which his goodsire was obliged particularly to perform himself, and that his father could not be thought successor to his goodsire, *titulo lucrativo*, because he got the fee of the land with a great burden, and so had the fee *titulo oneroso*. The Lords repelled the allegiance.

*2d MS. Page 7.*

1637. *February 22.* ALEXANDER HOME *against* JAMES RULE.

JAMES Rule, having comprised certain lands pertaining to Alexander Home, son to the Laird of Aytoun, a declarator of redemption is pursued by the said Alexander against the said James Rule, who had intromitted with the duties of the lands comprised, certain years; which duties, it was alleged, paid a great part of the sum for the which the lands were comprised. The parties being ordained to count and reckon, the compriser gives in, for his charge, the principal sum of £1904, contained in his bond, with £200 of penalty, for the which he had comprised; *item*, £116 of sheriff-fee; *item*, £200 for expeding the comprising: which above written sums he craved to be his principal. *Item*, He craved the ordinary annualrent for the said sums, and annual for annual. *Item*, He craved £1000 of expenses for prosecuting his actions against the tenants for their duties yearly. The Lords decerned him payment of his principal sum of £1904, and annualrent for the same, but refused to give annual for annual; and, for his sheriff-fee and expenses, decerned him to have £200, which was the penalty contained in his bond, but no annualrent for the same.

*2d MS. Page 37.*

1637. *February 24.* NICOL CAIRNCROSE *against* PILMURE.

In an action of double pointing, raised by Nicol Cairncrose, debtor to a rebel, against Pilmure, creditor to the rebel, on the one part; and Alexander Guthrie, donatar to the rebel's escheat, on the other part: Pilmure contends that he should be preferred to the donatar; by reason he both arrested and obtained decret thereupon, before the donatar obtained the gift of the rebel's escheat. The donatar contended, that, from the time of the rebellion, *jus erat acquisitum domino regi*; and no posterior diligence done by a creditor can prejudice the king of his casuality. The Lords preferred the arrester, in respect of his diligence.

*2d MS. Page 16.*

1637. *February 28.* MR JOHN WEYMES'S CREDITORS *against* JOHN WEYMES, his SON.

AFFIRMATION of a minor, that he was major when he knew himself to be minor,