

James Barnes against Robert Mastertoune, the Lords found the letters orderly proceeded, notwithstanding the reason alleged, founded on umquhile James Barnes his ticket, which was the ground of the pursuit, bearing, that, notwithstanding the obligation therein, they should, as compartners, *ut in contractu societatis*, the said Robert should bear a like hazard and risk with the said James; but so it was that the cairyies which are in question were meddled with by a bankrupt, and, consequently, the said Robert ought to lose as the said James; because the hazard pointed at was, if John Wallace, to whom they were directed as factor, should become *non solvendo*, or should put [them] in an unresponsal man his hand, then they should bear a like risk: or, if the said Robert and James should give order for delivery to any who might be bankrupt, and not where none was so given. But, by the contrary, Wallace being absent, the cairyies were intromitted with by a bankrupt, by the order of the said umquhile James only. There might have been a hazard also understood in bringing them back to the country, if they should have perished, seeing the ticket speaks of the receiving of them, or monies for them, one day after. The Lords would not sustain for the prices conditioned to Barnes, since that given for them in England was proven.

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1649. June 29. JOHN SPOTTESWOOD *against* KARKETTLE.

IN the action at the instance of John Spotteswood, as assignee constituted by his sister, to the sum of 1000 merks, belonging to her by virtue of a substitution contained in her contract of marriage, bearing, That, failyieing of the heirs of marriage, 2000 merks should go to the husband, his heirs and assignees, and 1000 merks should come to her, her heirs and assignees;—Karkettle, the defender, alleged, That he could not be liable to pay her, seeing the heirs failyied not. But this is not so clear;—because, suppose there were children of the marriage, yet they died before the mother, *nec erant deserviti; quod est apud nos jus acquirendi*. Yea, I think farther, that the substitution should stand till they outlived minority, and, becoming majors, have *liberam rerum suarum administrationem*. And the Lords decerned for the pursuer.

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1649. June 29. SPENCE *against* —————.

IN the former process at Spence his instance, there being a reason upon antedating or postdating a decret, and the process, with the minutes, being called for,—it was controverted who should deal with the clerk for production. But the Lords ordained the defender, who obtained the decret called for, to deal with the clerk.

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