

1649. *December 8.* CHRISTOPHER DAVIE, and GIBSONE, her SPOUSE, *against* JAMES JOHNSTOUNE and JAMES WRIGHT.

IN the suspension by Christopher Davie, and Gibson her spouse, against James Johnstoune and James Wright, the Lords found, in the former session, and now in this, That litiscontestation having been made in the decreet now twice suspended, the said Davie might give her oath after her marriage with Gibsone, and that his goods were liable for the debt, *ut in obligatione*, because he married her with all the faults that might follow her.—*See pages 412 and 415.*

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1649. *December 8.* JAMES ROB of BALNEILL *against* KENNEDIE of GILLESPIE.

IN the removing pursued by James Rob of Balneill, against Kennedie of Gillespie, the exception, That the defender bruiked the lands *pro indiviso*, was sustained: and the Lords found the reply, That they were severally kend and known, only, relevant; and not that, by the which he craved that the Lords would grant commission for division, in respect it altered the ancient form of purchasing brieves of division, or summons to that effect; for warnings import violent profits, and caution to be found by the proponers of any exception in a removing.

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1649. *December 8.* GEORGE FORRESTER *against* FOTHERINGAME and RINDE.

IN the action pursued by George Forrester, as assignee by John Denholme, against Fotheringame and Rinde, as heirs to James Couper, debtor to the said Denholme; it was found, That, although one of the heirs-portioners, defenders, was dead, yet the pursuer might restrict the payment of the sum craved to his half, and that he might propone upon his own peril payment made by the other heir-portioner, who was dead. And, in the same process, it was found relevant, that the defender offered him to prove that the said umquhile James Couper his brother's son was served and retoured general heir to him, and so behoved to be first discussed, before the pursuer could challenge them, who were but heirs by progress, as it seems, by provision in tailyie to the said James Couper's sisters, to whom, it seems, he had provided those lands in Striveling; which are of no great consequence, and wherein the same sisters had been infest as heirs of provision.

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1649. *December 8.* ROBERT HALIBURTOUNE *against* GRAY.

IN the suspension, Robert Haliburtoune against Gray, the Lords found the

letters orderly proceeded, for extension of the minute, whereby he obliged himself to sell them that land on the east side of Libbertoune's Wynde, pertaining to John Sharpe; and decerned him in the penalty consigned, with expenses: notwithstanding that he alleged it to be *factum imprestable quod penderet ex alieno arbitrio*, the land pertaining to a minor, who, with his curators, was refractory. Yet Robert himself was thought to be *in mora*, because he repented of the bargain, having intended once to buy also the great tenement on the west side; but the said John Sharpe and his curators finding him fastened with Gray, they sought a thousand merks or two more, which was imprestable to so covetous [a] man.

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1649. December 11. BLAIR against BLAIR and TYERIE.

IN the cause of Blair against Blair and Tyerie, the second daughter craved yet to be heard upon her contract of marriage; but the Lords found still, that, in both the contracts, there were two clauses: one that concerned the tocher in liquid sums, and that the eldest was justly provided to a greater sum; and another anent that which was not liquid, in making them equal in what he should have at his decease, and that the second should be a bairn of the house, as any of his daughters had gotten, or should get: which was ambulatory to his death; but the tochers were given as *præcipua*; and, if the father had had a mind to give the second as great a tocher as to the first, contrary to the destination of the first contract, he might have done it in the constitution of the tocher, in the second contract.—See page 427.

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1649. December 11. KIRKO against HUNTER.

IN the process of removing, Kirko against Hunter, it was excepted, That, suppose his tack was expired, yet his seazine maintained him while 800 merks were paid to him, since he had the duty of the land for the annualrent of the said sum. The which the Lords found relevant: notwithstanding it was replied, That Hunter behoved to count for a greater duty paid to him, that exceeded the said annualrent; because that his tack was usurious. The which allegiance the Lords did not respect, during the eleven years of the tack, but only since the interruption made by the warning; without the which they thought he might have bruiked *per tacitam* [*relocationem*,] as a wadset, while Porter, who gave the wadset, or Kirko, who had comprised his right, did redeem.

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1649. December 11. The LAIRD OF RENTOUNE against The LADY AYTONE.

IN that process of the Laird of Rentoune against the Lady Aytone, she was