

1649. *December 26.* WALTER KINNARDE of COUBINE *against* WALTER CHAMBERS.

IN the suspension, Walter Kinnarde of Coubine, cautioner for Innes of Coxtoune, against Walter Chambers, the reason against the special charge for payment of the duties since the crop 1644, at which time the said Innes, principal, had dispossessed the said Chambers, charger, and intruded himself in the possession in the lands wadset to the said Chambers; the reason, I say, That there was no ground in the contract to charge for the bygone maills and duties, was not sustained, in respect he was bound for Coxtoune to fulfil all the clauses contained in the contract; so that the cautioner must warrant the said Chambers to uplift the duties, crop 1637, and yearly thereafter, during the not-redemption. *Item*, The other reason in favours of the cautioner, That he should be free by the contract, he offering, after Coxtoune's majority, his ratification of the wadset foresaid; the which he now offers,—this reason, I say, was also repelled; because, by the contract, he is obliged to produce a lawful ratification and profitable, by Coxtoune, served and retoured thereon, infest after majority: which cannot now well be done, seeing all is comprised or adjudged from him in his minority, and reversion expired. And farther, the cautioner must be obliged for the bygone duties, because he can only be made free from the day and date of the production of a valid ratification.—*See page 446.*

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1649. *December 27.* DOBIE *against* PEARSONE.

IN the improbation and reduction pursued by Dobie against Pearstone, the Lords would not sustain the libel upon the general clause, except they would condescend by whom and to whom the writs called for were made; but they gave them leave to amend the libel, that it might infer certification of falset, *contra non producta*, suppose there was a special reason libelled in the reduction.

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1649. *December 27.* JOHN HALL *against* GABRIEL BAR.

IN the adjudication pursued by John Hall, skipper, against Gabriel Bar, as he who had renounced to be heir to his father Robert, in the pursuit of registration; the said Gabriel being called for his interest, propones that the said bond was for the part of a ship disposed by Hall to his father, which he refers to Hall's oath; and that the said Hall meddled with the whole profits of that, his part, which will far exceed the sums contained in the said bond; and this he offers to prove by witnesses. But the Lords would not suffer any probation by witnesses to take away the bond and writ foresaid, seeing he had action upon the disposition for all those profits that the ship made. *Item*, They found

that the said Gabriel, being called for his interest, might, notwithstanding the renunciation produced, propone the foresaid allegiance.

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1649. *December 27.* The Poor Woman MARTINE *against* HOME.

THE poor woman Martine, in the pursuit of reduction, *propter matrimonium non secutum*, of a disposition made, *intuitu matrimonii*, is assoilyied from any charges alleged made by the bastard, who was to marry her, and whose gift of bastardy, the defender, Home, had taken; and she preferred to prove, that she put him in possession of a going mill and houses noways ruinous, so that the maills and duties might supply all, being intromitted with by him. Neither can the infestment be thought profitably purchased from the house of Coldinghame, since the king was become superior.

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1649. *December 29.* WALTER KINNAIRD of COUBINE *against* WALTER CHAMBERS.

It was found farther for Chambers against Coxtoune's cautioner, that, seeing he could not repossess him, he should be liable for the principal sum and bygone annuals, although there was no requisition granted by the contract of wadset; because that was alleged to be Chambers's damage and interest, and the cautioner would get his relief off his friend Coxtoune, being thought to have borrowed his brother's name for eluding the poor man.—*See page 445.*

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1649. *December 29.* GLADSTONES *against* The SHERIFF of TEVIOTDAILL.

THE letters were found orderly proceeded at Gladstones's instance against the Sheriff of Teviotdaill, for entering him to the possession of certain lands. And the words of an alternative, "or to suffer him to enter," were not respected; because he had suffered his eldest son to take a new right of the said lands for debarring the poor man. And the Lords decerned for the bygone maills, with £100 of expenses if he entered him betwixt and Whitsunday; otherwise, that the whole 500 merks decerned of before should stand.

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1649. *December 29.* ROBERT NAIRNE *against* MOUBRAY and JARVIE.

IN the summons of double pointing raised by Mr Robert Nairne against