

that Curry was either then broke or suspected ; seeing there was adjected to his bond an attestation of him as sufficient, which was then required, but never subscribed.

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1692. *December 13.* The Younger Children of MALCOLM of Balbedie *against* MALCOLMS their Elder Brethren.

THE Lords advised the pursuit by the younger children of Malcolm of Balbedie against their two elder brethren ; and decerned them to grant bonds of corroboration for their principal sums, contained in the provisions destinate to them by their father, and that conform to the articles of agreement made betwixt the whole bairns, in their father's lifetime ; and this, notwithstanding a posterior agreement, made by the father with his two eldest sons thereafter ; for the Lords found that transaction could not derogate from the prior *jus quæsitum* to the children, without their own consent ; and found, this was not like a price of lands, to stand affected till all the incumbrances were purged, but like a bond given by a buyer, to one of the seller's creditors, and that they knew of this recognition before they entered into the articles ; and as to the abatement each of them were to give, of their annual-rents, during the Lady Innerteil's life, found it was not twenty shillings Sterling of L.100 Sterling of annual-rents, (though so worded in the articles,) but *e contra* the sixth part of the annual-rent of L.100 Sterling, viz. a retention of one of six in the hundred ; and first, they attempted to clear it by the former payments made of the annual-rents ; but that not clearing it, some were for taking Balbedie's oath, on the meaning of this ambiguous clause. But the plurality carried it to the foresaid sense, without any farther expiscation.

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1692. *December 14.* The LAIRD of Ottar *against* M'CALISTER of Tarbet.

THE Laird of Ottar against M'Calister of Tarbet. The Lords found his reason of reduction of the bond relevant, not so much upon minority, as that he was *in familia paterna*, and his father administrator of the law to him, and yet caused him subscribe cautioner for him in this bond, and so he was not legally authorised, seeing his father could not be *auctor in rem suam*, as was found between Sir George M'Kensie and Fairholm of Craighall, 7th Dec. 1666. But, in regard he had lain over so long, and that the creditor was going on in an adjudication which ought not to be stopped, (but here it was the first,) they ordained the bond to be produced, that if it appeared from it, that he was minor *in familia*, they would receive it instantly. But if it behaved to bide terms of probation, then they would not stop his adjudication.

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