

1629. *July 2.* CUNNINGHAM *against* MUTRAY.

If a second brother intromit with any of his father's heirship goods, his eldest brother being living, and the said elder brother deceasing before he be entered heir to his father, and so the second brother falling to be heir to his father; his intromission with the heirship goods while his brother was living, does not make, nor cannot make him heir.

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1629. *July 3.* FRANCIS DOUGLAS *against* JAMES STEWART.

IN the declarator of nonentries pursued by Francis Douglas against James Stewart, heir to David Stewart, since whose decease the nonentry was craved by the donatar of lands of Braidwood;—it was alleged, That no declarator can be craved at the donatar's instance; because this gift is taken to the behoof of the Earl of Lauderdale and Earl of Angus, his authors, seeing they have bruiked the possession of the lands since the decease of the said umquhile David, and so the nonentry can produce no farther right to the mails and duties of the said lands nor they have already; and the consequence of the declarator is frustrated. To the which it was answered, That the donatar might seek the declarator notwithstanding; that, in case their right of the lands should be reduced, they might use the gift of nonentry for their farther security. The Lords repelled the exception.

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1629. *July 7.* CALDWELL *against* ROBERT STIRK.

ROBERT Stirk, tenant in a tenement in Dumfermling, buys the heritable right of the same from Caldwell. The contract of alienation, containing a procuratory of resignation, is dated the 4th of November and the buyer is seised shortly after Martinmas. There is no reservation contained in the contract of the mails of the house from Whitsunday to Martinmas. The anailyer pursues for the said term's maill. The Lords assoilyie the buyer; because the contract and procuratory was subscribed before Martinmas, and no reservation made of the said term's maill.

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1629. *July 8.* HUGH EGLINGTON *against* ROBERT ROSSE OR RALPH.

A TRANSFERRING of a reduction may be pursued against an apparent heir *passive*.

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