

1649. July 5. ADAM MUSCHETT *against* JAMES RAITH.

IN the special declarator of Robert Forrester his bastardy, at the instance of Adam Muschett, donatar, against Mr James Raith, it was excepted, That, in the redemption used by Sir John Stirling, the 1700 merks were ordained to be given up to the said Mr James, as he who had best right, the said Forrester being also called, suppose he was absent. To the which it was replied, Grant that at that time the said Mr James his right was best; because the said Forrester was denudded in his favour; but that took not away Forrester his right of redemption from the said Mr James, by virtue of the condition that was amongst them, and backbond given by the said Mr James to the said Forrester, to be in his own place upon the payment or consignment of a rose-noble; which order he had used, and intented declarator before his death, which the said donatar is now following out. The said Mr James was excepting farther upon debts aughting to himself till exhaust the sum; and so he was left to be farther heard.—*See page 404.*

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1649. July 6. HELENE LAW and GEORGE LAWRIE *against* ANDREW KER, SON to MARGARET LAW.

IN the suspension and reduction, by Helene Law and George Lawrie against Andrew Ker, son to Margaret Law, the reason was proponed upon iniquity of the commissary that had repelled their exception against the said Andrew, or duply, *viz.* that umquhile Andrew Law, father to the said Helen, had obliged himself, by contract of marriage, that the said Margaret and her bairns should have 5000 merks made out to them for making them equal in tocher with the said umquhile Margaret and her husband, before that the said Margaret and her bairns should come in as bairns of the house: which was not performed; but the monies alleged paid by the said umquhile Andrew Law, were for losses sustained by the said George Lawrie, and by way of gift. Wherein the Lords found no iniquity, *quia nemo donat quamdiu debet*, except it had been so declared, and the letters were found orderly proceeded. But here it may be questioned, if the condition, *to be bairns of the house*, will make the oy to come in with the daughter for a part of the dead's part, since the oy *excluditur per gradum priorem; nec est representatio in mobilibus, nam quoad naturalem portionem* (which is bairn's part,) *non facimus vim.*

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1649. July 6. CUNINGHAME *against* BOSWELLS and The LAIRD of ADERNIE.

IN the process, Cuninghame against Boswells and the Laird of Adernie, anent an annualrent out of Lethame Sibbat his lands, it was excepted, That the bond of reversion in favours of Sibbat did not instruct, as title, the exhibition of

the wadset charter and seasine given [by] Boswell's authors to Cuninghame; *quia nemo tenetur edere instrumenta ad fundandam contra se actionem*; but, in respect this pursuit was to the behoof of my Lord Scotstarvet, the Lords would hear it in their own presence.

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1649. *July 6.* MACKEANE *against* CREDITORS of The LAIRD of BARNES.

IN the action, Mackeane against some other creditors of Laird of Barnes, it was sustained for the pursuer, That he had the prior right, and the keys delivered to him, whereof he gave one to one servant, and another to another servant, and that one of them, colluding with the defender, the other kept fast, so that the defender most violently broke up the doors.

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1649. *July 6.* GRAY'S BAIRNS *against* JEAN KENNEDIE.

IN the action at the instance of Gray his Bairns against Jean Kennedie, for a legacy left to them by their uncle, Lieutenant Colonel Bell, of 500 merks, the pursuit was sustained, notwithstanding the exception upon the alternative, either 500 merks, or the superplus of 3000 merks, resting owing to the defunct by George Suitie, whereof nothing was resting; because, in this case, *electio est legatarii*, for fulfilling of the defunct his will; the bairns being poor, and his sister's sons.

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1649. *July 6.* ALEXANDER M———— *against* MARGARET GLEN.

IN the exhibition pursued by Alexander M———— against Margaret Glen, relict, the pupil and his tutor craved the bonds to be delivered to them. But the relict excepted for such whereof she had her liferent, that she would find caution to make them and the sums forthcoming to the heir. But the heir replied, That he would find caution to her for her liferent. The which the Lords sustained, and ordained delivery.

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1649. *July 9.* WILLIAM FAIRLIE'S BAIRNS *against* The EARL of LAUTHIANE.

IN the process at the instance of umquhile William Fairlie his bairns against the Earl of Lauthiane, which hath depended ten or twelve years, in respect of the troubles; the Earl offered the principal sum. But, in respect it was informed that