

1649. *July 11.* MARIONE TWEIDDIE *against* VEITCHES.

IN the removing pursued by Marione Tweiddie against Veitches, the Lords sustained the summons against the exception of parts and pertinents of Dawicke's barony; in respect that it was replied, That she offered her to prove that it was known to be the vicar's lands, wherein she and her father stood infest. Whereanent much debate had been before, and cost the father his life, they being expressly infest therein.

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1649. *July 11.* GRAY *against* FISHER.

IN the action between Gray and Fisher, above mentioned, (*page 410,*) wherein Colmeslie has interest,—the Lords delayed their repossession till Michaelmas or Martinmas; but still find, that *actio ex lege commissoria* is not to be disputed before inferior judges.

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1649. *July 12.* JANET and KATHERINE RAMSAY *against* ELISABETH WILKIE.

THERE being infestment of 80 merks, granted *in anno 1624*, by umquhile John Ramsay, trumpeter, out of four tenements in the Canongate, to umquhile Mr James Wilkie, in liferent, and Christian Wilkie, redeemable by payment of 1000 merks; sentence for pointing the ground was recovered *in anno 1630*; the which is suspended by the tenants, because they are tenants to Janet and Katharine Ramsays, daughters to the said John, who had right from umquhile Robert Ramsay, their uncle, who was infest in an annualrent of 160 merks *in anno 1623*: upon the byruns whereof, they having comprised the whole tenements, and the legall being expired, the said Elisabeth Wilkie her pointing the ground, upon a posterior infestment, must be excluded. Likeas, the said heritors compear with the tenants, and allege eighteen years possession, which is more nor enough *in judicio possessorio*. To the which it was answered by the charger, That the infestment given to Robert Ramsay a year before, and his translation to the granter's daughters, together with the comprising following thereupon, cannot be more respected than a base infestment given to a man and his children, which is null by the Act of Parliament. Likeas the charger offers him to prove, that the tenements are possessed by the mother by virtue of a liferent infestment, who consented to the infestment given to the charger. The which the Lords sustained.

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1649. *July 12.* AYTOUNE of INCHDERNIE *against* DAVID AYTOUNE.

IN the action at the instance of Inchdernie, as assignee to the heirs of umquhile

Mr James Aytoune, his uncle, against his brother, Mr David Aytoune ;—it was excepted, That he cannot pay to the pursuer the 500 merks contained in his bond made to his uncle, because he offers him to prove that he paid as much for his uncle, and relieved his bond ; the which must compense the sum acclaimed. The which the Lords would not admit, unless he instructed that the sum paid by him, since the date of his own bond, was at his uncle's direction, and out of the defender his own money. Likeas, he must have assignation thereto, and comes properly against the cedents. Yet, it may be said, " Let Inchdernie, after lawful distress, seek his warrant."

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1649. *July 12.* POLLOCKE *against* The EARL of NITHISDAILL.

IN the transferring craved at the instance of Pollocke against the Earl of Nithisdaill, the Lords decerned in the transferring ; but would grant a suspension, that the Earl his person should be free, and that count should come in by way of suspension, to be granted to a short day : the assignee made to the Earl of Nithisdaill, his behoof, by the Earl of Dirletoune, in whose favours the said Earl of Nithisdaill had renounced ; the said assignee, I say, with the Earl of Nithisdaill, being obliged, that that preference shall not be prejudicial to their account, or any subsequent adjudication in favours of the pursuer.

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1649. *July 12 and 13.* CHRISTIAN DAVIE, and JAMES GIBSONE, Her Spouse, *against* JAMES WRICHT.

IN the suspension by Christian Davie, and James Gibsone, her spouse, against James Wricht, the reason was, that decret was given against her, clad with a husband, he being out of the country, and not cited. Whereto it was answered, That litiscontestation was made in the cause before their marriage, and referred to her oath, &c. suppose there intervned before the decret meikle of a year, and suppose the marriage was celebrated a half-year before the said decret ; *quia subsequens matrimonium non debet deteriorem facere actoris conditionem, judicio sic mutato.* And the Lords sustained the decret.

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1649. *July 13.* DAVID MURRAY *against* SIR JAMES HAY of SMITHFEILD.

IN the action at David Murray his instance against Sir James Hay of Smithfeild, upon a decret-arbitral given at London,—it was excepted, That although the blank was subscribed by the parties, and by the judges after the filling up, yet the submission was never subscribed by the parties, but only accepted