

1649. *November 28.* JAMES STIVENSONE *against* JOHN TWEEDIE.

IN James Stivensone his pursuit against John Tweedie, as lawfully charged to enter heir to his father, the exception was found relevant, That he behoved to have *annum deliberandi*, after the decease of his elder brother, who was apparent heir, and did exclude him.

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1649. *November 28.* ANNA CRANSTOUNE *against* ALEXANDER DOWGLAS.

IN the process of suspension pursued by Anna Cranstoune against Alexander Dowglas, it was found, That she might yet produce a renunciation, for freeing her from personal execution, because minor, and might be prejudged; but, that being done in the year 1647, it was opposed, That they did not seek personal execution; but that,—in respect of her fraudulent collusion, to the behoof of the umquhile Lord of Cranstoune, who was as her procurator, with whom she stayed, was entertained, who did not only pay her tocher, but also obliged him, in her contract of marriage, to relieve her husband and her of all decreets and process against her, as lawfully charged to enter heir;—the decret at Alexander Dowglas his instance might stand against her: seeing she, at least her procurators *ad lites*, did postpone the said Alexander most fraudulently, to the said Lord of Cranstoune; who, albeit the said Alexander had raised summons of registration before him, yet obtained decret of registration, without contradiction, *cognitionis causa*, she producing a renunciation to the said Lord, (he, in the meantime, trysting with the said Alexander,) and so got adjudication before the said Alexander urged the calling of his process: and then a day was taken, one after another, to delay the said Alexander: where the said Lord went on smoothly, if Dickson in Beill had not stopped his adjudication from the 10th of January to March; before the which time the said Alexander was stopped, by delays, to get this his decret, which is now craved to be suspended. *Et minoribus deceptis non decipientibus est subveniendum. Et licet in contractibus iis subveniatur, non tamen ita statuendum in judiciis, si fuerint contumaces, cum habeant actionem contra tutores et curatores, qui defendere debebant, præsertim cum hic nihil sit præjudicii aut incommodi in minorem redundaturum;* for they object, I know not what, a kind of lesion complemental, through ingratitude, in behalf of my Lord. There were some laws cited, namely, *L. Verum* 11. § 3. *et seq. ff. de Minor: L. in causæ* 13. *L. non omnia.* 44. *ff. eod. et tit. qui et adver. Cod.* But the Lords would have all the summonses of those decreets produced, that, by the dates, and the diets of calling every one of them, the collusion might be detected; and desired some of the number to meet upon it, and see if they could agree the business. And here, I thought, that not only the Lords, but the advocates, [were] mistaken, in so far as the pursuers thought the old interlocutor pronounced in their favours; neither did the defenders think of it otherwise; where, by the contrary, it is clear that the Lords receiving the renunciation *hoc loco*, that no personal execution should pass against this alleged minor, did establish the decret for comprising *hæreditatem paternam*: as, in adjudications, where it is renounced *debito tempore*, the creditor comes *contra jacentem de-*

*functi hæreditatem*: for else that restriction anent personal execution were superfluously *et inutiliter adjecta*. Neither were it yet justly adjected, except her minority, the time of the renunciation, were proven;—so that all the former dispute anent her collusion with my Lord Cranstoune, (which is clear by his employing of the advocates, and preferring or retarding her processes *respectivè*,) ought to come in when the dispute shall be betwixt my Lord Cranstoune and Alexander Dowglas.

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1649. November 29. LUMSDENE of BLENERNE *against* PATRICK MAER.

IN the suspension at Lumsdene of Blenerne his instance, against Mr Patrick Maer, charging upon a bond of relief given to George Stewart and assigned by him to the said Mr Patrick; for not representing the said Mr Patrick his debtor, taken by caption; the said George having given his bond to represent him *cum omni causa*, within a month; and the former bond having been given to the said George, for his relief: the letters were found orderly proceeded against the said Lumsdene; and also in the first bond against the said George, notwithstanding the reason that he was represented *debito tempore*, because not intimated to the said Mr Patrick.—*See page 424.*

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1649. November 29. JOHN BROWNE *against* JOHN AKEMAN.

THE exception of John Browne against John Akeman, pursuing for a tack-duty of money, *viz.* That he offered to prove victual delivered in satisfaction thereof, and counts betwixt them heard before honest men, was thought to be relevant to be proven by honest witnesses; against the common rule,—That writ can be taken away but by writ, or oath of party,—as hath been oftentimes decided in the contrary. Yet the Lords, before answering, would, *ex officio*, examine the said witnesses.

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1649. November 29. CRAIGE-COOKE *against* BROADFOOTE.

IN the suspension of multiplepointing of a decret of removing, suspended also of before, by Craige-Cooke against Broadfoote, the Lords thought it malicious, because the said suspender having taken of him, although *verbo*, (as use is within the town of Edinburgh,) he could not invert his master's possession, to bring in suppose true creditors, who had comprised. And farther, was alleged, That Broadfoote his right proceeded of a disposition made by a bankrupt to his daughter, which, by the Act of Parliament 1621, is null, *ope exceptionis*. And, for his fraudulent dealing, the Lords ordained the said tenant to pay £40.

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