

Moubray and Jarvie, Moubray was preferred, upon a prior disposition, suppose a posterior seaisine, against Jarvie his son, who had a prior seaisine by virtue of a posterior disposition, *quia inter conjunctas personas*; and whereas Jarvie's contract of marriage, bearing to infest the heirs of that marriage, was alleged to fortify that disposition, he could not be heir till his father died; and then, also, it behoved him to warrant his father's deed.

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1649. December 29. JAMES ANDERSONE *against* JOHN ROB.

IN the reduction of John Rob his service and retour by James Andersone, it was alleged, That the said James was son to James, who was son to Margaret Rob, the sister of the defunct's father, who had no brethren; and so John Rob his retour, whereby he was served heir to the defunct, as brother's children, must fall and be reduced. The Lords, before answer, would have some documents and witnesses, *hinc inde*, to be produced; and even of the assysours, who are not only judges, but witnesses: also who may be challenged, even as false witnesses, *et quod temere jurarint super assisa*. But [this] is much neglected in this age; and the old law, well constituted by our predecessors, shamefully eluded by general services, serving *affirmativè*, if none compear in the contrary, suppose they never knew the purchaser of the brieve his kindred; where it should be *per fideles homines patriæ qui optime norunt*.

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1649. December 29. LOWRIE *against* M'CALL.

IN the reduction, Lowrie against M'Call, upon the commission of an irritant clause for not-payment of feu-duty, the Lords thought it somewhat rigorous, that, because the superior offered what the buyer, within this two or three years, had given for the land. The Lords desired them to tryst upon it before some of their own number.

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1649. December 29. CLAXSTOUNE and WALDO *against* ROBERT FOULES.

IN the process, Claxstoune and Waldo against Robert Foules, for certain wares alleged directed to be sent home by one Buchane, servant to John Rinde, and received by the said John or Robert Foules, his partner, and converted to their use, which could not be proven but by the said Robert his oath,—the Lords absolved him, in respect of his deposition denying all, except only that anent the copartnery or society; which, notwithstanding, was mistick, because not