

1663. *July 1.* THOMAS OGILVIE of Trotock, *against* THOMAS BROWN.

THOMAS BROWN, by contract, is bound to give in tocher with his sister, L.1000 to Thomas Ogilvie of Trotock, and he is bound to add another L.1000; which haill sum is provided to the man and woman in liferent, and the heirs of the marriage; which failyieing, the one-half to return to the wife's heirs, and the other to the man's. The wife dying, leaves a bairn, which was never served heir, and thereafter dies. The husband convenes Thomas to pay the sum convened in tocher. ALLEGED, The existence of a bairn, though not served heir, purged the condition of the tailyie; and that *potentia succedendi* was respected in law, and not *actus*; and that *in personalibus* there could be no tailyie. Yet the Lords found the sum tailyied, which was not nullified by the existence of a bairn, he not being served; and that it returned to the wife's heirs; whereas, if the contract had been, in case there were no heirs, it had altered the case. Yet the decision was very hard.

*Act.* Dunmuire and Lockhart. *Alt.* Wallace.

*MS. folio 52.*

1663. *July 1.*

THE business of the recognition pursued by my Lady Carnegie against my Lord Cranburne; and the other action of declarator, at my Lord Stormond's instance, against the Earl of Annandale and his creditors; with the dispute betwixt the burghs royal and of barony; are to be had in the Informations thereof.

I PROCURED, from MR. WILLIAM LAUDER, Clerk, a Civil Register of Decrees, beginning the 1st of November, 1663, and ending the 22d, inclusive, of January, 1664; so that, in some measure, it comprehends what Decrees were done by the Lords, and extracted, the space of three months of a Winter Session, in that Chamber.

*Edinburgh, 6th November, 1663, Sederunt Domini Sessionis; Craigmillar, Præses; Clericus Registri, Clericus Justiciariæ, Halkerton, Lea, Carden, Colinton, Strathhurd, Kinglassie, Reeddie, Arniston.*

*Signet MS. folio 1.*

1663. *November 6.* BESSIE OSWALD, *against* SIR HENRY BRUCE of Clackmannan.

SIR HENRY BRUCE of Clackmannan, with his brother, James Lord Rollo, designed in the bond *Laird of Duncrub*, and George Auchinleck of Balmanno, by their bond, of the date 1640, grant them to have borrowed 9000 merks from Mr. Andrew Oswald, Adv. which they bind and oblige them thankfully to repay. In anno 1656, Mr. Andrew marries his daughter, Bessie Oswald, to Jo. Rollo of Woodsyde; and, in name of tocher, assigns her husband to this bond. The said Jo. coming to die; *in anno* 1661, makes his latter will; wherein he nominates his wife his sole executrix and intromissatrix with all his goods and gear. In his testament this bond is given up amongst his other debts. In 1662, she confirms the testament before the Commissary of Stirling; and then, as executrix nominated and confirmed, she pursues upon the said bond; and declares that, *hac instantia, or pro loco et tempore*, she passes from all the remanent defenders, except only Clackmannan himself: against whom she craves decret may be given *secundum allegata et probata*, because she produces instantly, in presence of the Lords, the extract of the said bond out of the register; *item*, her contract of marriage, wherein is the assignation to the said bond; *item*, her husband's testament testamantar, duly confirmed. All which rights, reasons, and allegeances, being seen and considered by the Lords, [were] found relevant, and so admitted to her probation. Which she clearly verifying, by production of the forementioned writs; the defender also not compearing to allege any reasonable cause in the contrary; the Lords decerned him to make payment to the said Bessie, as having good right to the same, by being executrix confirmed to her husband, who was assignee thereto.

*Act.* Norvell. No compearance for the defenders; and so a decret in absence.

Hay.

*Signet MS. No. 1. folio 1.*