

1705. *June 7.* WILLIAM STIRLING *against* JOHN MACREOCH.

MR William Stirling, writer to the signet, as donatar to the escheat and bastardy of one John Macreoch, a traveller-chapman, pursues a declarator of his being holden and reputed a bastard. Compearance being made for his nearest of kin, it was offered to be proven, That his father and mother cohabited together in Ireland as married persons; and that the said John was holden and reputed by all the neighbourhood their lawful son. And, in respect he was a very old man when he died, they craved a commission to Ireland; which being reported, and advised by the Lords this day, it was found proven, by many concurring witnesses, some of them a hundred years old, that the said John's father and mother were killed in the rebellion and massacre of Ireland in 1641, with all their children, except only this John, who was hid and saved in a wood from the native Irish by some neighbour, being then nine or ten years old, and afterwards came over to Scotland, and by carrying a pack gained some means; and that his father and mother were reputed, by all the country, married folk, and he also esteemed their lawful son.

The Lords found his legitimacy proven, and assoilyed from the declarator of bastardy; and finding it was both invidious and groundless to have taken out any such gift, therefore they inclined to modify large expenses to the defenders, to be paid them by this calumnious pursuer, who seems to have relied mainly on the impossibility of proving marriage *in re tam antiqua, post tanti temporis intervallum* as seventy or eighty years back; and many later marriages could hardly be so well adminiculated as this was, if they came to be drawn in question.

*Vol. II. Page 275.*

---

1705. *June 12.* COCHRAN of PRIESTGILL, and DYKES of HALBURN, *against* JAMES URQUHART of KNOCKLEITH.

COCHRAN of Priestgill, and Dykes of Halburn, pursue James Urquhart of Knockleith, on this ground, That he was donatar to the forfeiture of Halburn, as having been at the insurrection of Bothwell Bridge: And having componed the forfeiture for a sum of money, and transmitted the gift to Priestgill; and the Parliament having rescinded all these forfeitures in 1690, and ordained restitution of the compositions,—they pursued Knockleith for repetition of £50 sterling, as the sum paid on the transaction, with its annualrent from the date of the payment.

And he (whose name was only borrowed to the gift, for the Earl of Air-lie's behoof,) denying the sum received, they CONTENTED,—That the disposition of the gift, bearing onerous causes in the general, presupposes that it was near adequate to the value of the lands, and which is worth 6000 merks; and Dykes's oath should be taken on the composition.

ANSWERED,—When the heritors bought back their own forfeited lands, or their friends to their behoof, they ever got an easy bargain; and none ought to depone anent it but the donatar who received it, unless the writ had bore the particular sum.

The Lords found the pursuers behoved to prove the quantity of the sum given