

creet standing, would have Mr William to reason upon his rights. And when he alleged, He, having gotten his lands blench, could only be subject to the sheriff, and not to the king's chamberlain of the lordship, whose office is most to intermit with the rents within the lordship; and more, he was infeft *cum curiis et earum exitibus*, which, at the least, should free him from the bailie's courts, &c.;—yet, for all this, The Lords found, that unless, by his infeftment, he had been expressly exeemed from the bailie's jurisdiction, he remained still subject thereunto, notwithstanding of his blench holding.

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1631. December 16. MENZIES of CASTLEHILL against The LAIRD of CARSHOGILL.

MENZIES of Castlehill, as heir to his father, pursued Carshogill, (for whom the pursuer's father, as cautioner, had paid 2000 merks,) upon a clause of relief contained in the bond, wherein the pursuer's father was cautioner for the defender. Alleged, The benefit of that clause of relief pertained not to the heir of the defunct, but to his executor; as was decided *supra*, (Edgar and Cant against Edgars and their Tutors, 1628, July 10.) Replied, He that was debtor could not allege that; but, if the executor were striving with the heir, he might do it. As for the defender, he was subject in payment, and could not found a reason upon another man's right; and, to free the defender of all danger, the pursuer offered to find caution to relieve him at the executor's hands, and all others. The Lords repelled the allegiance, in respect of the reply and offer of caution.

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1632. January 17. ROBERT STEWART against JANET and RACHEL STEWART.

ROBERT Stewart convened Janet and Rachel Stewart, daughters to his brother, Mr Lodovick, as charged to enter heirs-portioners to their umquhil father. They having renounced, he craved adjudication of certain lands and acres belonging to their father. Compeared the said Rachel, one of the daughters, and alleged, That she, having convened her other sister, Janet, who was her sister-german, as heir to her father, she had renounced; whereupon the defender had intented an action of adjudication of the same tenements, &c. before the pursuer, and therefore should be preferred to him, at the least come in *pari passu* with him. Replied, The defender's decret-absolvitor, whereupon the adjudication is craved, is null, and ought not to be respected, because the said umquhil Mr Lodovick having two daughters, and apparent heirs-portioners to him, the decret is obtained only against one of them, and the said defender ought to have assigned her debt, and caused the assignee convene both the heirs, and obtain decret against them; which is not done here. Duplied, That which she might do by an assignee, she might do in her own name; and being pursued, she could not call herself, but only the other sister, *hoc attento maxime*,

that she craves adjudication for the half. The Lords found the allegiance relevant to make her come in with the other.

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1632. *February 7.* WILLIAM HOME *against* DOROTHEA HOME.

By contract of marriage between Samuel Home and Isabel Cranston,—William Home of Whitrig father to the said Samuel, and George and Robert Homes his two brothers, were bound to pay 2000 merks to the said Samuel and his wife, to be employed upon annual-rent to the behoof of them and their heirs. William Home, heir to this Samuel, got this contract registrat against Dorothea Home, heir to the said George his father's brother; and, having charged her, she suspended on this reason, That, by a decreet-arbitral pronounced betwixt the pursuer's father Samuel and umquhil Helen Home his mother, the foresaid contract of marriage was decerned to be delivered to the said Helen to be cancelled. Alleged, The decreet-arbitral was null, in respect that, there being only submitted all differences betwixt the said Samuel and Helen, there could be no more decerned than concerned themselves submitters: But so it is, that there was no difference betwixt them anent the payment of the said sum contained in the contract, Helen not being a party-contractor therein; But the truth was, that the said George, Samuel's elder brother, who was obliged, with his father and brother Robert, for payment of that 2000 merks, being chosen oversman in that submission betwixt Samuel and Helen; he himself, after he had decerned anent the differences betwixt the parties submitters, did cast in, That, at the end of the decreet, that Samuel should deliver that contract to be cancelled. Replied, It, being a decreet standing, could not be taken away summarily, but behoved to abide reduction. The Lords found the decreet null by way of exception.

Next Alleged, The charger could not challenge it upon that nullity, because he had homologated it, in so far as he did enter to the possession of the mill of Old Aiton, as was decerned in that decreet, and also had paid to his mother nine bolls of malt yearly after that, as long as she lived; in respect whereof he had ratified the decreet, and could never impugn it after that. Answered, That homologation could not be extended further than to that which concerned the two submitters, neither could it import a liberation to the oversman of his obligation in that contract, which fell not within the compass of the submission. The Lords found this homologation not such a deed as might prejudice the charger to quarrel the decreet upon the ground foresaid.

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1632. *February 7.* WILLIAM COWIE *against* GIBSONS.

In a pursuit for £120, by William Cowie against Gibsons, executors to Isabel Sutherland, their mother, the pursuer was suffered to restrict it to £100.

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