

the wadset charter and seasine given [by] Boswell's authors to Cuninghame; *quia nemo tenetur edere instrumenta ad fundandam contra se actionem*; but, in respect this pursuit was to the behoof of my Lord Scotstarvet, the Lords would hear it in their own presence.

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1649. *July 6.* MACKEANE *against* CREDITORS of The LAIRD of BARNES.

IN the action, Mackeane against some other creditors of Laird of Barnes, it was sustained for the pursuer, That he had the prior right, and the keys delivered to him, whereof he gave one to one servant, and another to another servant, and that one of them, colluding with the defender, the other kept fast, so that the defender most violently broke up the doors.

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1649. *July 6.* GRAY'S BAIRNS *against* JEAN KENNEDIE.

IN the action at the instance of Gray his Bairns against Jean Kennedie, for a legacy left to them by their uncle, Lieutenant Colonel Bell, of 500 merks, the pursuit was sustained, notwithstanding the exception upon the alternative, either 500 merks, or the superplus of 3000 merks, resting owing to the defunct by George Suitie, whereof nothing was resting; because, in this case, *electio est legatarii*, for fulfilling of the defunct his will; the bairns being poor, and his sister's sons.

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1649. *July 6.* ALEXANDER M———— *against* MARGARET GLEN.

IN the exhibition pursued by Alexander M———— against Margaret Glen, relict, the pupil and his tutor craved the bonds to be delivered to them. But the relict excepted for such whereof she had her liferent, that she would find caution to make them and the sums forthcoming to the heir. But the heir replied, That he would find caution to her for her liferent. The which the Lords sustained, and ordained delivery.

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1649. *July 9.* WILLIAM FAIRLIE'S BAIRNS *against* The EARL of LAUTHIANE.

IN the process at the instance of umquhile William Fairlie his bairns against the Earl of Lauthiane, which hath depended ten or twelve years, in respect of the troubles; the Earl offered the principal sum. But, in respect it was informed that

the sum was a part of the price of some lands bought by the said Earl, whereof he enjoyed the fruits, especially, seeing it was minor's gear; albeit the Earl pretended that he behoved to have a sentence at the executor's instance, seeing it was confirmed in testament before he could make payment. The Lords found the annualrent due.

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1649. *July 6 and 7.* LADY RENTONE *against* GEORGE STEWART.

IN the suspension above written, Lady Rentone against George Stewart, because of the Laird his wilfulness, who would not let his wife depone, the Lords sustained the bond *per se*; although it was excepted, that the same was null, she being minor *in familia paterna*, where the father was administrator to her, and did not consent, as if it had been given by a minor, having curators, without their consent; was repelled, in respect it was not alike; and the father, John Stewart of Coldingham, his consent was not much worth; likeas, he was in England at that time: *et in rem minoris abundantissime versum*, as is else said; it being notour, that there were lands comprised worth 6000 merks yearly, for the use of her and her sister, all bruiked by the Laird,

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1649. *July 7.* JOHN PETER *against* JOHN BOYDE.

IN the forementioned suspension at John Peter his instance against John Boyde, although the bond had, in the end, the clause "to relieve either of them others *pro rata portione*," yet it supplied not the defect of the words "conjunctly and severally:" but certainly they were bound conjunctly *tantum*; so that either of them should pay the equal half. And, because John Peter his sum was 7000 merks, where Mr Hamilton's was scarce 1000; the clause of relief was proportioned, in the end of the bond, by the clause foresaid.

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1649. *July 7.* TEMPLE *against* MURRAY.

IN the suspension by Temple against Murray, the reason, Offering *ipsa corpora* of so many goods as were to the fore, was repelled, after decreet; and some prior suspensions, where the goods have been partly lost, partly deteriorated. And the letters were found orderly proceeded for the prices contained in the decreet, and large expenses decerned.

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