letters orderly proceeded, for extension of the minute, whereby he obliged himself to sell them that land on the east side of Libbertoune's Wynde, pertaining to John Sharpe; and decerned him in the penalty consigned, with expenses: notwithstanding that he alleged it to be *factum imprestabile quod penderet ex alieno arbitrio*, the land pertaining to a minor, who, with his curators, was refractory. Yet Robert himself was thought to be *in mora*, because he repented of the bargain, having intended once to buy also the great tenement on the west side; but the said John Sharpe and his curators finding him fastened with Gray, they sought a thousand merks or two more, which was imprestable to so covetous [a] man.

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1649. *December* 11. BLAIR *against* BLAIR and TYERIE.

IN the cause of Blair against Blair and Tyerie, the second daughter craved yet to be heard upon her contract of marriage; but the Lords found still, that, in both the contracts, there were two clauses: one that concerned the tocher in liquid sums, and that the eldest was justly provided to a greater sum; and another anent that which was not liquid, in making them equal in what he should have at his decease, and that the second should be a bairn of the house, as any of his daughters had gotten, or should get: which was ambulatory to his death; but the tochers were given as *præcipua;* and, if the father had had a mind to give the second as great a tocher as to the first, contrary to the destination of the first contract, he might have done it in the constitution of the tocher, in the second contract.—*See page* 427.

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1649. *December* 11. KIRKO *against* HUNTER.

IN the process of removing, Kirko against Hunter, it was excepted, That, suppose his tack was expired, yet his seasine maintained him while 800 merks were paid to him, since he had the duty of the land for the annualrent of the said sum. The which the Lords found relevant: notwithstanding it was replied, That Hunter behoved to count for a greater duty paid to him, that exceeded the said annualrent; because that his tack was usurary. The which allegeance the Lords did not respect, during the eleven years of the tack, but only since the interruption made by the warning; without the which they thought he might have bruiked *per tacitam* [*relocationem,*] as a wadset, while Porter, who gave the wadset, or Kirko, who had comprised his right, did redeem.

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1649. *December* 11. The LAIRD of RENTOUNE *against* The LADY AYTONE.

IN that process of the Laird of Rentoune against the Lady Aytone, she was

admitted, after litiscontestation, to give her oath, or rather to propone, by way of exception, the quality contained in her oath, anent the retention of the annuity payable to her, as possessor of the teinds, conform to the proportion due out of her tack-duty which she was obliged to pay to the Laird of Rentoune, being £100: and to keep off the years aughting, so much as she had paid, although she had paid, some years before, the said tack-duty without retention; because it was scarce well known while some years thereafter, by an Act of Exchequer, who should relieve ilk other thereof. And here it was alleged, That Sir Robert Dowglas, being obliged to relieve the Laird of Rentoune of such burdens, the Lady Aytone, in whose favour Sir Robert had procured that her tack, without sums of money, was obliged to relieve the said Sir Robert.

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1649. *December* 12. The EARL of NITHISDAILL *against* YOUNG and WILLIAM MAXWELL.

IN the decreet of wrongous intromission with teinds, by the Earl of Nithisdaill, Young, and Mr William Maxwell, in respect of certain nullities contained therein, and challenged, but, after a certain space, helped and amended;—the Lords would have the tenants reponed to their oaths, and all the titles libelled upon to be produced.

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1649. *December* 12. KINNABER *against* FORBES.

In that process, of Kinnaber against Forbes, the Lords sustained, That Kinnaber, against whom litiscontestation was made for not compearance, might extract the said act, propone an exception, and prove it instantly: notwithstanding that Forbes alleged, He might take up his process, and insist therein at his pleasure; neither could Kinnaber urge him farther, but by way of action, to insist, because it was not as a continuation, but a judicial act, standing registrate.

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1649. *December* 13. ——— *against* JAMES ROS.

IN the removing of James Ros,—the Lords, not knowing that there was an exception proponed upon a tack for terms to run, and admitted to the defender's probation, had ordained £40 of expenses for the proponing of that reply, anent a commission for division; which was against the form; and therefore, upon farther information, delayed that anent the expenses until the event of the process.

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