

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*,