

That he, being superior, ought to have a year's duty for his entry. Against the which it was answered, That the most the superior could crave was a year's annualrent of the principal sum of 2400 merks, for the which the lands were comprised by the charger; and it were against all law and reason and equity, that, for so small a sum, the charger should pay 800 merks to the superior, which is a year's duty of the lands; especially seeing the compriser, when he is entered and infest, is uncertain of the possession of the lands, in respect of divers persons that have claim to them, and action depending thereanent. The Lords would not restrict the year's duty to the annualrent of the money; but took consideration of the premises, and modified the year's duty to three hundred merks.

*2d MS. Page 38.*

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1637. June 9. LADY CARDROSSE *against* LORD NEPARR.

THE Lord Neparr is willing, conform to the Act of Parliament, to buy his teinds from the Lord Cardrosse, being minor; the price is set down by the Commission. The Lady Cardrosse, mother to the titular, having commission from the Earl of Buchan, tutor to the Lord Cardrosse, to sell and dispose the said teinds; pursues the Lord Neparr for the price. He alleges, He could not make payment to her as factor or commissioner, but must have a disposition subscribed by the tutor himself, or otherwise he cannot be *in tuto*. The Lords found the lady had power to sell, by virtue of the commission granted to her by the tutor. But sundry of the Lords, of best judgment, were of the contrary opinion.

*2d MS. Page 83.*

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1637. June 27. ARCHIBALD MONCRIEFF'S BAIRNS *against* ARCHIBALD MONCRIEFF, his SON.

THE deceased Mr Archibald Moncrieff, minister at Abernethie, by his testament, nominates his eldest son, called Mr Archibald, his executor, who confirms the testament; in the which, the testator leaves his haill dead's part to be equally divided amongst his bairns, who were unforisfamiliated. In his executor-account, he craves to be allowed to him the third of the defunct's part, as due to him for his office, conform to the Act of Parliament, Ja. VI, Par. 22, cap. 14. It is alleged for the bairns, That the Act of Parliament has no place where the defunct expressly leaves his dead's part to his bairns, or to any other legator; for the executor, knowing the dead's will by his testament, it was voluntary to him to have accepted the office or refused the same. The Lords found, in this case, the executor had no right to the defunct's third part by the Act of Parliament.

*2d MS. Page 79.*

Sicklike, the said deceased Mr Archibald Moncrieff, some few hours before his death, gave, to his eldest son, executor nominate to him in his testament,

the key of a kist, wherein he told him there was a certain sum of ready money, which he directed him to take to himself, the same not being inserted in his testament. Of the which sum the relict and bairns crave the two part, as due to them, although omitted furth of the testament, seeing the defunct could not, *in articulo mortis*, dispone or give away any more in their prejudice except the third part of the said money, being his dead's part. The Lords found, That the defunct could dispone or give away no more but the third, which was his dead's part, in prejudice of the relict and bairns.

*2d MS. Page 79.*

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1637. *July 7.* LADY BLAQUHAN *against* The TENANTS of CULTREOCH.

MARY Stewart, relict of the deceased John Kennedie of Blaquhan, pursues removing against the tenants, contained in her seasine. It is alleged, This seasine could give her no process against the tenants of the lands of Cultreoch, because it is taken at the place of Blaquhan, lying in Carrick, and could not serve for the lands lying in Galloway. To the which it was answered, That the seasine was given upon a charter granted to her and her spouse by her father-in-law, the Laird of Blaquhan, conform to her contract of marriage; who had the haill lands contained in the seasine united in one barony, by a charter given by the king, and the seasine appointed to be taken for the haill lands at the place of Blaquhan; so he might very well give a charter to his apparent heir, and his spouse, of the said haill lands contained in his charter of union, and appoint the seasine to be taken at the place contained in his charter. To the which it was duplied, That this charter, alleged to be the warrant of the seasine produced, is but base, to be holden of the granter; and, albeit the king's vassal may have a union granted to him by the king, (who has only power to grant a union,) yet he has no power to grant a union to his sub-vassal, except it were confirmed by the king. To the which it was answered, That the old Laird of Blaquhan, since the base infetment given to his apparent heir and his spouse, has resigned the haill lands, and, upon his resignation, the king has given a new infetment to his son. To the which it was answered, That upon this new charter no seasine was taken to the lady, but only to her spouse. The Lords sustained the seasine, in respect of the first reply.

*2d MS. Page 50.*

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1637. *November 11.* The CREDITORS of FLEYMING of CORWOOD *against* Him.

AND,

1637. *July 5.* WILLIAM DICK *against* THOMAS THOMSON.

FLEYMING of Corwood, having contracted great debt, and absenting himself; wherethrough his creditors suspected that he had fled, and therefore gave in supplication to the Lords, that they might have a commission to apprehend the said Fleyming, and present him to the Lords, that some order might be taken for their satisfaction, before he escaped, seeing the creditors understood