

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

where he lurked : It was long reasoned amongst the Lords, that, seeing he was neither at the horn, nor letters of caption against him, but the king's free liege ; there could no commission be granted to his creditors to take him. And this was the opinion of them who were of best judgment ; but the greater number yielded to give a commission, but sent a messenger with the party, who, finding Corwood outwith the town, brought him in to the session, and there, with his own consent, he was content to remain in a house in Edinburgh, and keepers with him, for certain days, that he might treat with his creditors to give them satisfaction.—11th November 1637.

*2d MS. Page 51.*

The like was granted to William Dick against Thomas Thomson, factor at Rowan, although no bankrupt.—5th July 1637.

*2d MS. Page 52.*

1637. November 15. RICHARD GUTHRIE against The EARL of GALLOWAY and his SONS.

RICHARD Guthrie, assignee to an annualrent disponded to Mr Archibald Lindsay, and Christian Heriot, his spouse, furth of the lands of Sourby, pursues the Earl of Galloway, and his sons, heritors of the lands out of the which the annualrent is payable ; as heritors, at the least, as they who uplifted from the tenants the maills and duties of the lands : to see and hear them decerned to make payment of the annualrent addebted of the years bygone, and yearly in time coming, during their occupation. It was alleged by the defenders, That they could not be convened *personali actione*, but they behoved to poind the ground for the said annualrent, and poind the tenants of the ground. The Lords sustained the summons against the heritors, being intromitters with the duties for so much as they have intromitted with for bygones, but not for time to come ; for which the pursuer must intent new action, in case the heritors intromitted with the duties from the tenants.

*2d MS. Page 171.*