

1649. July 5. ADAM MUSCHETT *against* JAMES RAITH.

IN the special declarator of Robert Forrester his bastardy, at the instance of Adam Muschett, donatar, against Mr James Raith, it was excepted, That, in the redemption used by Sir John Stirling, the 1700 merks were ordained to be given up to the said Mr James, as he who had best right, the said Forrester being also called, suppose he was absent. To the which it was replied, Grant that at that time the said Mr James his right was best; because the said Forrester was denudded in his favour; but that took not away Forrester his right of redemption from the said Mr James, by virtue of the condition that was amongst them, and backbond given by the said Mr James to the said Forrester, to be in his own place upon the payment or consignment of a rose-noble; which order he had used, and intented declarator before his death, which the said donatar is now following out. The said Mr James was excepting farther upon debts aughting to himself till exhaust the sum; and so he was left to be farther heard.—*See page 404.*

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1649. July 6. HELENE LAW and GEORGE LAWRIE *against* ANDREW KER, SON to MARGARET LAW.

IN the suspension and reduction, by Helene Law and George Lawrie against Andrew Ker, son to Margaret Law, the reason was proponed upon iniquity of the commissary that had repelled their exception against the said Andrew, or duply, *viz.* that umquhile Andrew Law, father to the said Helen, had obliged himself, by contract of marriage, that the said Margaret and her bairns should have 5000 merks made out to them for making them equal in tocher with the said umquhile Margaret and her husband, before that the said Margaret and her bairns should come in as bairns of the house: which was not performed; but the monies alleged paid by the said umquhile Andrew Law, were for losses sustained by the said George Lawrie, and by way of gift. Wherein the Lords found no iniquity, *quia nemo donat quamdiu debet*, except it had been so declared, and the letters were found orderly proceeded. But here it may be questioned, if the condition, *to be bairns of the house*, will make the oy to come in with the daughter for a part of the dead's part, since the oy *excluditur per gradum priorem; nec est representatio in mobilibus, nam quoad naturalem portionem* (which is bairn's part,) *non facimus vim.*

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1649. July 6. CUNINGHAME *against* BOSWELLS and The LAIRD of ADERNIE.

IN the process, Cuninghame against Boswells and the Laird of Adernie, anent an annualrent out of Lethame Sibbat his lands, it was excepted, That the bond of reversion in favours of Sibbat did not instruct, as title, the exhibition of