

1649. *July 7.* GRAY and FISHER, *against* WHYTEBANKE.

IN the suspension between Gray, Fisher, and Whytebanke, the reason was found relevant, dipping upon the nullity of the decret, where an inferior judge took upon him to declare a failie in a contract; which kind of process, as also modifications, are only proper to the Lords. And sustained the action of ejection and spuilie for repossession only.—*Vide infra, page 414.*

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1649. *July 7.* JAMES ADAMSONE and his TUTOR *against* ISOBELL CUNINGHAME, his MOTHER'S EXECUTRIX and FACTRIX.

IN the action of count between James Adamson and his tutor against Isobell Cuninghame, his mother's executrix and factrix, constituted by the tutors for some years; she craved, that she might have off the heir, for his sister's entertainment bypast, a certain modification. Which the Lords granted during the years of her pupillarity; after which time she might do for herself. *Item,* That, seeing the moveables were exhausted by a supervenient debt, not thought upon by the defunct, aughting to the Earl of Balcleuch, extending to 11,000 merks, and neither the heir his sister could get any provision, nor the mother her legacy; the Lords would take to their consideration, that my Lord Balcleuch gave down 2000 merks due to him, for the wife and children; which would have come off the heir, the testament being exhausted. Which they did; but could give no annual, suppose my Lord pretended such a gift also, because not due off such counts.

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1649. *July 10.* COLONEL BRYMEAR and his SPOUSE, the Relict of Bruntoune, Younger, *against* The Old LAIRD of BRUNTOUNE.

IN the action at the instance of Colonel Brymeare and his spouse, the relict of Bruntoune, younger, against the old Laird of Bruntoune, for entertainment of the apparent heir; since she had but a small conjunct fee, considering the tocher given, and her goodfather had yet thrice so much during his lifetime: the Lords, nevertheless, assoilyied the old Laird, as not coming under the compass of the Act of Parliament anent wardatars and liferenters; but that she was the only liferenter liable; in respect, that even the defunct his son, if he had lived till his family had increased, much more the father, could not be compelled to ease his overburden by the conditions and provisions contained in his contract of marriage, wherein he gave him the fee.

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