

1649. *November 28.* JAMES STIVENSONE *against* JOHN TWEEDIE.

IN James Stivensone his pursuit against John Tweedie, as lawfully charged to enter heir to his father, the exception was found relevant, That he behoved to have *annum deliberandi*, after the decease of his elder brother, who was apparent heir, and did exclude him.

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1649. *November 28.* ANNA CRANSTOUNE *against* ALEXANDER DOWGLAS.

IN the process of suspension pursued by Anna Cranstoune against Alexander Dowglas, it was found, That she might yet produce a renunciation, for freeing her from personal execution, because minor, and might be prejudged; but, that being done in the year 1647, it was opposed, That they did not seek personal execution; but that,—in respect of her fraudulent collusion, to the behoof of the umquhile Lord of Cranstoune, who was as her procurator, with whom she stayed, was entertained, who did not only pay her tocher, but also obliged him, in her contract of marriage, to relieve her husband and her of all decreets and process against her, as lawfully charged to enter heir;—the decret at Alexander Dowglas his instance might stand against her: seeing she, at least her procurators *ad lites*, did postpone the said Alexander most fraudulently, to the said Lord of Cranstoune; who, albeit the said Alexander had raised summons of registration before him, yet obtained decret of registration, without contradiction, *cognitionis causa*, she producing a renunciation to the said Lord, (he, in the meantime, trysting with the said Alexander,) and so got adjudication before the said Alexander urged the calling of his process: and then a day was taken, one after another, to delay the said Alexander: where the said Lord went on smoothly, if Dickson in Beill had not stopped his adjudication from the 10th of January to March; before the which time the said Alexander was stopped, by delays, to get this his decret, which is now craved to be suspended. *Et minoribus deceptis non decipientibus est subveniendum. Et licet in contractibus iis subveniatur, non tamen ita statuendum in judiciis, si fuerint contumaces, cum habeant actionem contra tutores et curatores, qui defendere debebant, præsertim cum hic nihil sit præjudicii aut incommodi in minorem redundaturum;* for they object, I know not what, a kind of lesion complemental, through ingratitude, in behalf of my Lord. There were some laws cited, namely, *L. Verum 11. § 3. et seq. ff. de Minor: L. in causæ 13. L. non omnia. 44. ff. eod. et tit. qui et adver. Cod.* But the Lords would have all the summonses of those decreets produced, that, by the dates, and the diets of calling every one of them, the collusion might be detected; and desired some of the number to meet upon it, and see if they could agree the business. And here, I thought, that not only the Lords, but the advocates, [were] mistaken, in so far as the pursuers thought the old interlocutor pronounced in their favours; neither did the defenders think of it otherwise; where, by the contrary, it is clear that the Lords receiving the renunciation *hoc loco*, that no personal execution should pass against this alleged minor, did establish the decret for comprising *hæreditatem paternam*: as, in adjudications, where it is renounced *debito tempore*, the creditor comes *contra jacentem de-*