

letters orderly proceeded, for extension of the minute, whereby he obliged himself to sell them that land on the east side of Libbertoune's Wynde, pertaining to John Sharpe; and decerned him in the penalty consigned, with expenses: notwithstanding that he alleged it to be *factum imprestable quod penderet ex alieno arbitrio*, the land pertaining to a minor, who, with his curators, was refractory. Yet Robert himself was thought to be *in mora*, because he repented of the bargain, having intended once to buy also the great tenement on the west side; but the said John Sharpe and his curators finding him fastened with Gray, they sought a thousand merks or two more, which was imprestable to so covetous [a] man.

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1649. December 11. BLAIR against BLAIR and TYERIE.

IN the cause of Blair against Blair and Tyerie, the second daughter craved yet to be heard upon her contract of marriage; but the Lords found still, that, in both the contracts, there were two clauses: one that concerned the tocher in liquid sums, and that the eldest was justly provided to a greater sum; and another anent that which was not liquid, in making them equal in what he should have at his decease, and that the second should be a bairn of the house, as any of his daughters had gotten, or should get: which was ambulatory to his death; but the tochers were given as *præcipua*; and, if the father had had a mind to give the second as great a tocher as to the first, contrary to the destination of the first contract, he might have done it in the constitution of the tocher, in the second contract.—See page 427.

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1649. December 11. KIRKO against HUNTER.

IN the process of removing, Kirko against Hunter, it was excepted, That, suppose his tack was expired, yet his seazine maintained him while 800 merks were paid to him, since he had the duty of the land for the annualrent of the said sum. The which the Lords found relevant: notwithstanding it was replied, That Hunter behoved to count for a greater duty paid to him, that exceeded the said annualrent; because that his tack was usury. The which allegiance the Lords did not respect, during the eleven years of the tack, but only since the interruption made by the warning; without the which they thought he might have bruiked *per tacitam* [*relocationem*,] as a wadset, while Porter, who gave the wadset, or Kirko, who had comprised his right, did redeem.

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1649. December 11. The LAIRD OF RENTOUNE against The LADY AYTONE.

IN that process of the Laird of Rentoune against the Lady Aytone, she was