

1628. *July 1.* ROBERT HALLYBURTON *against* The LADY BOTHWELL and FRANCIS STEWART, her Son.

ROBERT Hallyburton, assignee, constituted by Sir George Home of Manders-toun, to the escheat and liferent of the Laird of Coldingknows, in so far as might concern the sum of 6000 merks, addebted by an heritable bond made by the Lady Bothwell and Francis Stewart, her son, to the Laird of Coldingknows; pursues, for a special declarator, of the sum contained in the bond, and annualrent thereof. It is excepted, That the principal sum, being heritable, fell not under the gift of liferent or escheat, and the annualrents must be gifted yearly, and are not like the duties of the lands holden of the king, or any other superior. To the which it was answered, That albeit the annualrents are not expressed in the bond to be holden of the king, that seeing no other superior to them is expressed, it must be presumed that they hold of the king, and the gift bears all annualrents pertaining to the rebel. The Lords found the principal sum neither to fall under the gift of escheat or liferent, in respect that the bond is heritable, and found the byruns preceding the gift of escheat to fall under the gift of single escheat, and the byruns thereafter to pertain to the donatar of the liferent; and, in case the principal sum be paid by the debtor, the gift of the liferent from that time to cease.

Page 120.

1628. *July 2.* GOLDMAN'S DAUGHTER and her CURATORS *against* _____.

THE daughter of Goldman pursues, with consent of her curators, for delivery of a certain sum of money. The defender alleged, That she had three curators; and, by the act of curatory, it is ordained that two of them at least should consent; and there being one only of all the three now in life, the defender cannot be *in tuto*, except she choose new curators. The Lords ordained the defender to pay the sum to her and her curators, and ordained her to choose new curators.

Page 29.

1628. *July 2.* MARGARET NAYSMYTH *against* ALEXANDER MENZIES of BALMAHOME.

By contract of marriage, the future spouse, and cautioners with him, are obliged to wair and bestow a certain sum, upon annualrent, to the married folks, during their lifetimes, and, after their decease, to their heirs. The husband dies; the relict charges the cautioners to fulfil the contract to her, and to lay out the money, conform to the contract, that she may have her liferent of the annualrent. The cautioners suspend, and offer the principal sum to the relict, she finding caution to make it forthcoming to the heirs. She refuseth, as not obliged by the contract. The Lords found the letters orderly proceeded against the cautioners.

Page 44.