

bodies; which failing, Mr John and his heirs. To the which it was answered, to the first member of the said reason, That this contract is *innominatus*, but a contract of tailyie, wherein there is no *locus penitentiae*. And to the last member, it is answered, That it is possible for the pursuers to fulfil, by resigning the lands in favours of Mr John; and that they should have any benefit of succession by virtue of this contract, it is expressly against the meaning thereof. The cause being disputed by writ, the Lords absolved the defenders from all the reasons of reduction and found, That their mutual contracts of tailyie were so obligatory, as none of the parties, without consent of others, might constitute their heirs to that heritage contained in the contract; but, notwithstanding of the same, although inhibition was served in these contracts, yet any of the parties might sell and dispoise lawfully the lands, but might not make any other tailyies in prejudice of the said contract.

Page 45.

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1630. January 25. MARGARET ANDERSON *against* GILBERT LAWDER.

A DECRET, obtained at a party's instance, wherein the defender is proven to be heir, by production of a seisine bearing the defender to be infest in certain lands, as heir to his father, albeit the said decret be gotten for null defence, yet, so long as it stands unreduced, may be used for proving of the said defender to be heir, and in another action pursued at another man's instance.

Page 60.

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1630. January 26. ——— *against* ———.

AN incident being sought for proving of an exception of payment, by discharges granted to the defender's father, which were alleged either to be in the hands of the persons that were tutors and curators to the defender, or in the hands of him that got the gift of the defender's ward;—to which it is answered, That now the defender is not minor, but major, and thir discharges ought to be accounted his own evidents, and he should have, since his perfect age, sought and recovered them, and therefore ought not now to have an incident. The Lords would not sustain an incident, but granted to the defender a long day, he making faith that he had not the alleged discharges.

Page 101.

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1630. January 29. SIR JAMES SCOTT *against* The TENANTS of KINGSBARNES.

SIR James Scott, having an assignation of a certain victual out of the King's-barns, granted to him in pension by King Charles, convenes the tenants for payment to him thereof, or of a certain price for the bolls of the said victual. It is alleged by the tenants, That they ought not to pay a greater price to a pensioner nor the price set down by the Exchequer. Which the Lords sustained.

Page 115.