

Mr James Aytoune, his uncle, against his brother, Mr David Aytoune ;—it was excepted, That he cannot pay to the pursuer the 500 merks contained in his bond made to his uncle, because he offers him to prove that he paid as much for his uncle, and relieved his bond ; the which must compense the sum acclaimed. The which the Lords would not admit, unless he instructed that the sum paid by him, since the date of his own bond, was at his uncle's direction, and out of the defender his own money. Likeas, he must have assignation thereto, and comes properly against the cedents. Yet, it may be said, " Let Inchdernie, after lawful distress, seek his warrant."

*Page 55.*

---

1649. *July 12.* POLLOCKE *against* The EARL of NITHISDAILL.

IN the transferring craved at the instance of Pollocke against the Earl of Nithisdaill, the Lords decerned in the transferring ; but would grant a suspension, that the Earl his person should be free, and that count should come in by way of suspension, to be granted to a short day : the assignee made to the Earl of Nithisdaill, his behoof, by the Earl of Dirletoune, in whose favours the said Earl of Nithisdaill had renounced ; the said assignee, I say, with the Earl of Nithisdaill, being obliged, that that preference shall not be prejudicial to their account, or any subsequent adjudication in favours of the pursuer.

*Page 56.*

---

1649. *July 12 and 13.* CHRISTIAN DAVIE, and JAMES GIBSONE, Her Spouse, *against* JAMES WRICHT.

IN the suspension by Christian Davie, and James Gibsone, her spouse, against James Wricht, the reason was, that decret was given against her, clad with a husband, he being out of the country, and not cited. Whereto it was answered, That litiscontestation was made in the cause before their marriage, and referred to her oath, &c. suppose there intervned before the decret meikle of a year, and suppose the marriage was celebrated a half-year before the said decret ; *quia subsequens matrimonium non debet deteriore facere actoris conditionem, judicio sic mutato.* And the Lords sustained the decret.

*Page 56.*

---

1649. *July 13.* DAVID MURRAY *against* SIR JAMES HAY of SMITHFEILD.

IN the action at David Murray his instance against Sir James Hay of Smithfeild, upon a decret-arbitral given at London,—it was excepted, That although the blank was subscribed by the parties, and by the judges after the filling up, yet the submission was never subscribed by the parties, but only accepted

by the judges. Whereto it was replied, That, seeing the thing controverted was in the submission condescended, the parties needed not to subscribe but the blank wherein the decret was to be filled up; which being done, all stands good, as if one would subscribe a blank to another. Wherefore, the Lords sustained the said action.

Page 57.

---

1649. July 13. JOHN MONRO of LEMLAIRE *against* ROBERT MONRO of ASSIN.

THE Laird of Fowles being obliged for 1000 merks to John Baine of Tulloch, by his bond, wherein Hector Monro of Clynes and Robert Monro of Assin were cautioners, the said John Baine made Hector Monro assignee, and he made translation to John Monro of Lemlaire, who charges the said Robert of Assin, the other cautioner, and, denouncing him, gets his escheat, which he craves to be declared. It was excepted, That the horning was null, being raised without a warrant, some of the assignees being dead, and, namely, the said Hector; whereto there needed, if not a bill, yet a transferring. But the Lords found no *nullitas juris*, but *facti*, where death must be proven, and so cannot stay the declarator. It is here to be pitied, that Baine, knowing the sum to have been paid off the Laird of Fowles's monies, who was principal, thought he might have given discharge to Robert Monro of Assin, the other cautioner; which excluded the assignee, and brought double warrandice upon the said Baine.

Page 57.

---

1649. July 13. BAIN *against* BARCKLAY.

IN the declarator between Bain and Barcklay, it was very idly disputed anent a bond bearing annualrent without condition of infetment, could fall under escheat, since there are express Acts of Parliament bringing such bonds under executry for the bairns, but denying that they can fall under escheat, or that the relict can have any third of the same.

Page 58.

---

1649. July 13. SIBBET *against* ROBERT DURIE.

IN the action of removing, Sibbet *against* Robert Durie, the Lords found the exception relevant upon an absolutor given, the preceding year, before the sheriff of Fife; where the pursuits were *inter easdem personas, super eodem titulo, et iisdem in judicium deductis*. Yet, on a new warning and a new title, that exception could not exclude.

Page 58.