

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.

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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.

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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.

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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.

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