

1649. *December 6.* EUPHAME BLAIR *against* MARGARET BLAIR, and her Husband TAYERIE.

IN the process by Euphame Blair, eldest sister, who went out of the country, against Margaret, the younger, and her husband Tayerie, who intromitted with her father's gear and heritage,—the Lords found, That the father giving, by the elder's contract of marriage, 2230 merks of tocher, and, in the same, restricting the rest's tocher to £1000, with condition and provision that the eldest should have as much as any of the rest at his decease ;—they found, I say, that the defender having gotten 1600 merks in tocher, suppose she had, in her contract, that she should get as much as any of his bairns had gotten, or was to get, should not be meant or understood of making her tocher equal with the eldest, but of what should be by and attour at his decease, there being then other daughters alive ; suppose now, after the father's decease, the rest being dead, the defender urged to be alike with her elder sister in all, *obligatione confusa*, and that upon her contract of marriage. For the Lords thought, that, according to law, *prior obligatio in contractibus prevalet* ; and he might have given the second a like tocher with the first, if it had been his mind, *licet in ultimis voluntatibus posteriora derogent prioribus*.—See page 430.

Page 79.

---

1649. *December 6.* KER *against* KER and HEPBURNE.

IN the double pointing, Ker against Ker and Hepburne, the Lords thought not the diligence done by James Ker, upon his arrestment before the commissary of Peebles, of that effect, in respect of anteriority, against Hepburne, who got decret posterior to him before the Lords ; because Hepburne's process was sisted by concurrence of the commissary of Peebles himself, in taking term after term to produce the debtor in whose hands the monies were arrested.

Page 79.

---

1649. *December 6.* The LAIRD of ARDROS *against* THOMAS ABERCROMBIE and JAMES CHRIGHTOUNE.

THE Laird of Ardrös prevailed against James Chrichtoune for a debt aughting by Thomas Abercrombie of that ilk to his father, because, by the bond charged upon, the said James was obliged to relieve the said Thomas of that debt ; notwithstanding that James opponed a renunciation of the lands, by payment of 12,000 or 13,000 merks. This bond of Thomas Abercrombie to Ardrös his father, bearing the sum to be eiked to the reversion, because it was never registrate, and remaining so, personal, it was understood that the said James did refuse to pay it, the time of the renunciation granted. Whereupon, within 24 hours, Ardrös his father caused arrest some of the price of the land : but deceasing, or otherwise hindered, while the said Thomas Abercrombie came out of Ireland. He then, being urged upon his own bond, did assign this bond of