

1649. *December 8.* CHRISTOPHER DAVIE, and GIBSONE, her SPOUSE, *against* JAMES JOHNSTOUNE and JAMES WRIGHT.

IN the suspension by Christopher Davie, and Gibson her spouse, against James Johnstoune and James Wright, the Lords found, in the former session, and now in this, That litiscontestation having been made in the decreet now twice suspended, the said Davie might give her oath after her marriage with Gibsone, and that his goods were liable for the debt, *ut in obligatione*, because he married her with all the faults that might follow her.—*See pages 412 and 415.*

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1649. *December 8.* JAMES ROB of BALNEILL *against* KENNEDIE of GILLESPIE.

IN the removing pursued by James Rob of Balneill, against Kennedie of Gillespie, the exception, That the defender bruiked the lands *pro indiviso*, was sustained: and the Lords found the reply, That they were severally kend and known, only, relevant; and not that, by the which he craved that the Lords would grant commission for division, in respect it altered the ancient form of purchasing brieves of division, or summons to that effect; for warnings import violent profits, and caution to be found by the proponers of any exception in a removing.

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1649. *December 8.* GEORGE FORRESTER *against* FOTHERINGAME and RINDE.

IN the action pursued by George Forrester, as assignee by John Denholme, against Fotheringame and Rinde, as heirs to James Couper, debtor to the said Denholme; it was found, That, although one of the heirs-portioners, defenders, was dead, yet the pursuer might restrict the payment of the sum craved to his half, and that he might propone upon his own peril payment made by the other heir-portioner, who was dead. And, in the same process, it was found relevant, that the defender offered him to prove that the said umquhile James Couper his brother's son was served and retoured general heir to him, and so behoved to be first discussed, before the pursuer could challenge them, who were but heirs by progress, as it seems, by provision in tailyie to the said James Couper's sisters, to whom, it seems, he had provided those lands in Striveling; which are of no great consequence, and wherein the same sisters had been infest as heirs of provision.

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1649. *December 8.* ROBERT HALIBURTOUNE *against* GRAY.

IN the suspension, Robert Haliburtoune against Gray, the Lords found the