

1663. *December 11.* BARBARA MORISON, Widow of THOMAS MORTIMER, *against* THOMAS MORTIMER, her Son.

*IN anno 1629*, there is a contract matrimonial made and subscribed betwixt Mr. Jo. Mortimer, bailie and burges of Aberdein, and Thomas Mortimer, his son, on the one part; and Barbara Ferguson, mother to Barbara Morison, her daughter, with consent of George Morison, her brother, afterwards provost of Aberdein; wherein the said Thomas Mortimer binds and obliges him to solemnize the bond of marriage with the said Barbara Morison: *Item*, he and his father bind and oblige them and their heirs, to ware, employ, and bestow 12,000 merks on lands or annualrent, when the best occasion may be had of employment of the same: and that to be forthcoming to the said Barbara in liferent, at the least 720 merks, as the ordinary annualrent thereof; and to the bairns to be procreated, in fee. This obligation neither in her husband's time, nor in his father's time, is performed: whereupon, her husband dying, she charges Thomas Mortimer, her son, to enter heir within forty days, conform to the act of Parliament; and then summons him to compear, &c. to hear and see himself decerned to fulfil his father's contract of marriage with her, conform to equity, reason, and the tenor of the foresaid contract. In this action, he compears, and produces a renunciation under his hand, to be heir to his father. Upon the production whereof, his procurator craves protestation that he may be free from this action. Which the Lords admitted, assoilyeing him from the hail points of the said summons; yet ordain sick action and process to pass against him at the pursuer's instance, *cognitionis tantum causa*, as if he had entered heir to his said father; that she and the other creditors may have action of adjudication *contra hæreditatem jacentem et bona mobilia*; which the Lords decerned, upon protestation made by the pursuer's procurator.

*Act.* Patrick Fraser. *Alt.* Mr. David Dinmure, Jo. Murray.

*Signet MS. No. 32, folio 10.*

There is another decret given, betwixt the same parties, deducing the fore-mentioned summons; only, in this second decret he is charged to enter heir on sixty days, as furth of the country. No compearance is made for him; no mention of his renunciation to be heir. *Simpliciter* he is charged, decerned, and ordained to fulfil the said contract of marriage to the pursuer.

I take this to be the decret *cognitionis causa*.

*Signet MS. No. 33, folio 11.*

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1663. *December 11.* JAMES HAMILTON *against* SIR ALEXANDER HAMILTON of Hags, WILLIAM MURRAY, WILLIAM COCHRAN of Ruchsoalls, MUNGO MURRAY of Carlaverock, and PATRICK MURRAY of Keillor.

SIR ALEXANDER HAMILTON of Hags, William Murray, portioner of Longhermiston, (which part Mr. Robert Deans has now,) Mr. William Cochran of Ruch-