

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.*

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-

soalls, Mr. Mungo Murray of Carlaverock, and Patrick Murray of Keillor, by their bond, dated 1660, grant them to have borrowed from Jo. Hamilton, of Bangour, the sum of 4000 merks, which they oblige them to repay to him, and Marion Hamilton, his spouse, her liferent use thereof; and, for his surer repayment, they oblige them to infest and sease him in an annualrent effeiring to the said sum, which shall ever be redeemable on payment of the said sum: *item*, declared that if Bangour, and his foresaids, choose rather to uplift their money than to retain the said security, in that case they bind and oblige them to make good and thankful payment thereof, without any premonition or requisition to that effect. Bangour in 1663 dies. His son Jo. (Cut-the-wind) serves and retours himself heir to his father; then, with consent of his mother, assigns the bond to Ja. Hamilton, merchant in Edinburgh, who summons the parties before-named, granters of the bond, to hear and see them decerned to make payment to him of the said sum. The Lords decern conform to the desire of the summons; because the defenders, compearing by their procurators, alleged no reasonable cause in the contrary; *item*, because the Lords saw the said bond, assignation, and retour.

*Act.* Mr. Thomas Lermonth. *Alt.* Mr. Robert Sinclair, John Harper, and Nathaniel Fyfe.

*Signet MS. No. 34, folio 11.*

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1663. *December 12.* ANDREW KER *against* The MAGISTRATES of COUPER.

THERE is a contract, in October, 1652, made betwixt Sir Ja. Melvill of Hallhill and Bruntiland, on the one part; and George Jameson, provost of Couper in Fyfe, with the remainant council thereof, taking the burden upon them for the body and community of the said burgh: wherein Hallhill sets to the town of Couper a tack of the teind sheaves and burgh acres of the corn-field land about the town; wherefore they oblige them in payment yearly to the said Sir Ja. of L.500. *In anno* 1654, Sir Ja. assigns and disposes this contract to Mr. Andrew Ker, advocate. Mr. Andrew, by his translation, disposes to Mr. Andrew Ker, clerk of Linlithgow; who, charging the magistrates of Couper therefore, they suspend, upon multiplepointing; the same sum being also arrested in their hands, at the instance of Sir. Jo. Weymes of Bogie, Sir Robert Farquhar of Monnie, Andrew Balfour, and James Melvill, burgesses in Edinburgh; and consigns in Mr. Thomas Hay, clerk to the process, his hands, the sum of L.800, addebted; which they are most willing be made forthcoming to any the Lords shall find to have best right thereto, upon their sufficient acquittance and discharge thereof; and providing the Lords ordain all the rest to desist from troubling the suspenders for payment thereof. Compear, on the calling of this suspension, the charger's procurators; and produce for them, the registrate contract, the assignation, and translation thereof. Compear procurators for the arresters, and produced their discharge of the said arrestment, wherein they declared they passed from their arrestment, in favours of the charger.

In respect whereof, the Lords decerned the said Mr. Andrew, charger, to be preferred to the sum consigned, (whereupon Mr. Thomas Hay de-