

if he had declared that the lands of Corrowa should only belong to the heirs of line, it would undoubtedly have excluded the heirs of conquest. He has done the equivalent; for, having provided the lands to Archibald, and his heirs whatsoever, he does, by a posterior explicatory clause, declare, that, if Archibald died without heirs of his body, Alexander should be Archibald's heir therein, notwithstanding of any law or custom to the contrary; which can have no other meaning than that, notwithstanding by the law, John, as heir of conquest, would succeed to Archibald, wanting heirs of his own, yet Alexander, the younger, who would be heir of line, should succeed; which is as much as to say, that this provision should belong to Archibald's heirs of line, and not to his heirs of conquest; and, consequently, having made no mention of Alexander's heirs, he did also mean Alexander's heirs of line, who is the pursuer Thomas; and the case is so much the more favourable, that, if this failed, Thomas hath neither provision nor aliment. The Lords, considering that both parties were infants, and that, if Archibald should die, Thomas would get all, superseded to give answer anent the heritable right of succession until both parties were major; and, in the mean time, allowed Thomas to possess the profits of the lands, who had no aliment nor provision.

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1671. *February 14.* GEORGE BAIN *against* The BAILIES of CULROSSE.

GEORGE Bain pursues the bailies of Culrosse for payment of the debt of a rebel, whom they had suffered to go free up and down their streets; whereupon he had taken instruments against them, and protested that they should be liable for the debt,—seeing *squalor carceris* is justly introduced against debtors that will not pay their debt, and the magistrates of burghs may not take it off in whole or in part; and produced a practick observed by Durie upon the 27th of March 1623,—Smith against the Bailies of Elgine,—where the prisoner being suffered to walk freely upon the streets till he obtained a charge to set to liberty, the magistrates were found liable. The defender alleged Absolvitor; because he offers to prove that this prisoner's going out was necessary, *viz.*—he, being a person altogether indigent, was permitted sometimes to go and mendicate his bread, and once to go to the burial of a child of his own; and immediately thereafter, the pursuers having taken instruments, the rebel was put in ward, and continued there till he died. Which the Lords found relevant to liberate the burgh.

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1671. *July 18.* The COUNTESS of CASSILS *against* The EARL of ROXBURGH.

THE Countess of Cassils, in her contract of marriage with the Lord Ker, being provided to £5000, he did, *stante matrimonio*, provide her to an annualrent of 10,000 merks further during her lifetime. And, upon his deathbed, he made two testaments of one date: By the one he nominated his father tutor to his