

1692. *December 14.* JOHN CLERK *against* BESSY M'KITRICK.

JOHN CLERK, writer, against Bessy M'Kitrick. The Lords considered that it seemed her usage had been very bad when in prison, and kept in the woman-house with the malefactors, where no jailor-fee uses to be exacted; and that he had suffered a protestation to pass against himself, though a writer, and did not advert to discuss the suspension; so there was grounds of suspicion of his colluding; yet they found it could not be taken away but by his own oath, that he knew the cause of this bond, wherein he was engaged for her as cautioner, was for jailor-fees, and that it was extorted, and that there was either none or less due, and that he colluded, and had not paid the sum, but was labouring to cast the whole debt upon her.

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1692. *December 15.* JAMES BUCHAN of Oikhorne *against* JAMES FORBES of Thornton.

THE Lords advised James Forbes of Thornton's debate with James Buchan of Oikhorne, and found the presumptions on Thornton's side more pregnant, that Maghie had paid the 1000 merks, and so entered to the possession of the wadset; and therefore ordained Mr. John and James Buchans, who had now acquired Maghie's wadset, to renounce the same in favours of Thornton, and to pay him the annualrents of the said 1000 merks, conform to his back-bond; but in regard James's bond to Normand Lesly was not produced, and he might yet be distressed, the Lords ordained James Forbes to find caution to James Buchan, to relieve him of that debt, in case he should happen to be distressed for it at any time hereafter.

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1692. *December 15.* JOHN PAIP *against* MURRAY of Keilor, and MAJOR MURRAY.

MR. JOHN PAIP's action against Murray of Keilor, and Major Murray, who had consented to young Keilor's contract of marriage, burdening his fee only with 12,000 merks; and yet by a private back-bond, of the same date, Keilor declared it should not prejudice Major Murray's debt, which was alleged to be *contra fidem tabularum nuptialium*. The Lords found any such private transaction could not prejudice the liferent provision in that contract to the wife; but that the children procreate of that marriage could not quarrel the said deed, seeing any clause conceived in their favours was only a mere destination, and which they could never reach without being heirs to their father, and so would become liable for his debts, though contracted after the date of the said contract; for he being fiar, what hindered him to sell or dispoise it the next day, it only being provided to them as general heirs, and not as special heirs of a marriage, which would make