

1649. July 5.

BERBIE *against* LAW.

IN the suspension betwixt Berbie and Law, in respect the reasons dipped upon nullities of the decret, the Lords ordained the letters to be suspended, while the decret was produced, as being that which is principally called for.

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1649. July 5. LORD BORTHICKE *against* SCOTTE of GALLOWSHEILLES.

IN the exhibition pursued by my Lord Borthicke, against Scotte of Gallowshelles, it was excepted, That the said Lord could have no such writs exhibited *ad deliberandum*, since he had renounced in favours of the defender his father, who was a lawful creditor; especially seeing the said Lord was then major when he renounced. It was replied, That, *nihil tibi reo deest*, who have not sought adjudication upon that renunciation; and you, who pretend yourself to be a creditor, may be in a better case, when, upon the inspection of the writs, I may resolve to enter heir, and satisfy you to your less charges; yet there may be here some loss of time, and perhaps prelation of creditors. There had been here a great dispute before, *de adita hæreditate et repudiata, de abstentione et immixtione, et jure deliberandi, et de successione ex testamento et ab intestato*; where they mistook the difference of *aditio et immixtio*, thinking that to be *in testamentis*, and this *ab intestato*, where both are *in testamento*; *et hæres extraneus dicitur adire hæreditatem, suus vero se immiscere.*—*Tit. de Hæc. Qual. et Differ. lib. 2. Institut.*

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1649. July 5. LAIRD of OR and CUNINGHAME *against* PORTERFEILD.

IN the exhibition, Laird of Or and Cuninghame against Porterfeild, for a contract of marriage, containing a tailye, impignorated by the said Cuninghame to the said Porterfeild for the sum of 500 merks, borrowed from Porterfeild his son, to whom he was caution for the said Cuninghame; and likewise for count and reckoning of some maills of lands possessed *precario* by the said Cuninghame through Porterfeild his favour, or else for reporting a discharge of the same to Porterfeild from the heir-male served and retoured. To that exception it was replied, That he being the heir-male apparent, by that same contract, it was impossible to him to fulfil the said conditions, except he got up that contract. It was duplied, What then shall be for my surety? The Lords thought fitting that contract should be given up, for the day of the service, and surety found for redelivery of it unregistrat.

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