

gear of their umquhile father, who should have been executors to him. Neither needed she to confirm any thing. But they, being nearest of kin, are *in pessima fide* not to have confirmed, and so must be liable, as intromitters, for her third.

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1650. *January 4.* POOR MARGARET MALE *against* JANET BRUCE.

THE poor woman, Margaret Male, was reponed to her oath, by way of suspension, against Janet Bruce, who was assignee constituted by umquhile Patrick Bald, who had obtained decreet against the said Margaret, holden as confessed, but had made no use thereof, for five or six years, until he was imprisoned, and thereafter assigned the same to the said Janet; who alleges now that Margaret cannot be reponed, since she cannot depone now in prejudice of her husband. Which the Lords thought but a cavillation, the husband not proponing the same.

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1650. *January 5.* AGNES WOOD *against* GALBRATH, &c.

[*See page 454.*]

IN the foresaid action, Wood against Galbrath, there is now exception of payment proponed; but, because the bond was made in Ireland, after the English form, and the place of payment is expressly designed by the bond to have been made at a certain house in Ireland, they craved, that, as there, so here, the payment might be proven by witnesses; which is not admitted here, suppose it were within £100, if it take away writ. Likeas, it was alleged, That the action being for goods only within this kingdom, if there be any; since they are in Ireland, *animo remanendi*, the probation ought not to be sustained here, but according to the custom of this country. Wherein the Lords inclined to admit probation by witnesses, they first proving that it is the constant practick in those parts to do so.

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1650. *January 5.* SPENCE *against* DOWGLAS.

IN the action pursued by Spence against Dowglas, it was excepted upon the improbation of the execution; which was thought hard, in respect all process might be so very long delayed, and a creditor might be interrupted and stopped in his diligence by a con-creditor, or by the party debtor, if he should strive to prefer one to another. And true it is, that improbation, *via exceptionis*, of the executions of a warning, or a horning for to eschew violent profits, and maintain possession, or for taking away rebellion, might have been sustained. But I have heard the exception of *alibi* repelled. Yet the Lords thought, that the consignment of a great sum might make them steal from it.

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