

than ten pieces, which he had offered to him ; he, having delivered the testament, and gotten fifteen dollars in part of payment, as he alleges,—pursues the said James for the ten pieces, upon his promise before the commissaries, and refers to his oath ; who depones with a quality, as is alleged ; and is assoilyied. The said Quintene intents reduction, before the Lords of Session, within the year ; as use is, and ought to be, of commissaries' decreets. Yet the Lords assoilyied the said James, and ordained £40 of expenses against the pursuer, being a member of the house. And the Earl of Cassells, being an extraordinary Lord of the Session for the time, would have had him refunding the fifteen dollars that he got, with fifteen farther.

*Page 162.*

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1650. *January 15.* SURREARIERS and DOWNAM *against* MARY GARDINES.

MARY Gardines, as executrix to her husband, Thomas Binning, being pursued by Surrariers and Downam, merchants of Amsterdam, for the price of certain wares coft by him, according to his ticket ; did except against the ticket, That it did not design the writer's name, nor was subscribed before witnesses, according to our law. But the Lords repelled the same, in respect of a former practick, wherein the custom of that country was proven to be, betwixt merchant and merchant, without such solemnities. Yea, I could think, that she who was confirmed executrix-creditrix to her husband for implement of her contract of marriage, should not be preferred to strangers, who know not such customs as ours are ; *dum sequuntur fidem popularium nostrorum.*

*Page 163.*

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1650. *January 15.* JOHN ACHESONE *against* PETER ADAMSONE.

THE exhibition, at John Achesone's instance against Peter Adamsone, was sustained to be proven by witnesses, what they would not exhibit of their own accord, reserving against the deliverer : which is otherwise in any writ deponed in a third man's hand, wherein the depositary's oath is only receivable.

*Page 164.*

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1650. *January 15.* SPENCE *against* MILLAR.

IN the action, Spence against Millar, pursued by Spence, relict of Archibald Wauchope, as executrix dative surrogated *ad omissa et mala appretiata*, as her umquhile husband was, for the goods left out or undervalued in umquhile John Wauchope's testament by umquhile Margaret Liddell, his executrix and spouse, who was married after to William Millar, and which William Millar is confirmed executor to her : decret was given against him, *pro interesse* ; who has suspended upon that reason, That the said umquhile Margaret her inventory of testament