

1650. *January 23 and 24.* WHITTINGHAME *against* HATELIE.

IN the suspension, Whittinghame against Hatelie, the reason bearing, that the charger had disposed and assigned the 1000 merks contained in the decret, was not found relevant, suppose that yearly rent disposed indefinite, not determining the time from the which the said disposition should begin; because, long before the said disposition, the charger, as executrix-creditrix, had confirmed the household gear, and meddled with the same for payment of that year. And far less did the reason, upon the foresaid meddling or intromitting, elide the second part of the charge, which was for satisfaction to her of her cautionary; since that intromission paid the other sum. So the letters were found orderly proceeded upon the decret against the tenants of Whittinghame; who alleged, also, that they had paid to a factor: but that was premature, before the time of payment, and after the decease of the constituent; *quod non jure factum, quia, mortuo mandatore, expirat mandatum.*

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1650. *January 23 and 24.* LYLLE *against* TAILYEUR.

IN the suspension, Lylle against Tailveour, suppose for a small sum, the Lords would hear the reduction depending in their own presence; because it was alleged, in the reason, That the said bond was given for redemption of a disposition made foolishly by the said Lylle's brother's son [of] his succession to the said Lylle, who was yet living, *quod est contra bonos mores*, and inhibited by all law; the which cause is contained in the bond itself.

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1650. *January 23 and 24.* CAIRNECROSS and MENTEITH *against* LIVINGSTOUNE.

IN the action for maills and duties by Cairnecross and Menteith against Livingstoun, the exception, upon the defender's infestment, was taken away by a reply founded upon a decret of reduction, *ex capite inhibitionis*, before the pursuer did comprise, and was infest: notwithstanding it was duplied, That the defender had reduction depending of that decret, *reductivè*; alleging, that the bond whereupon the inhibition had followed was satisfied.

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1650. *January 23 and 24.* The MASTER of GRAY *against* HOGGISHYAIRDE.

IN the action for payment, the Master of Gray against Hoggishyairde, the

defender was ordained to lift some monies that he had consigned in a suspension against the Master's father upon reasons, for the greater part of the sum not consigned, very ill instructed, and also irrelevant ; as did appear, when he could object nothing in this action why the greater part should not likewise be paid.

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1650. *January 23 and 24.* KER against HEPBURNE and KER.

IN the suspension, Ker of ——— against Hepburne and Ker, who had both obtained decret for making an arrested sum forthcoming ; after long strife upon diligence betwixt them, the Lords decerned the suspender to pay both the sums, notwithstanding he had confessed, before the Lords, but a small sum ; because 1000 merks being arrested and called to be made forthcoming before the commissary of Peebles, he did not come and depone, but proponed another exception of payment of the debt wherefore arrestment was used ; and so, having succumbed, was liable in the whole sum arrested.

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1650. *January 24 and 25.* MARGARET HOME, Donatar to JOHN HOME's Escheat, against MR ALEXANDER HOME and JOHN BONNAR.

IN the action of count and reckoning at the instance of Margaret Home, donatar to umquhile John Home his escheat, against Mr Alexander Home and John Bonnar, it was excepted upon an absolvitor ; this pursuit being *inter eadem personas super eadem re et eodem modo agendi*. It was not sustained, in respect that, in that first process, some things were craved, and, being referred to their oath, that process was abstracted, and alleged lost by the clerk, and a new summons doubled off the signet by the defenders ; whereupon they offered to give their oath, and are noted thereupon to have given the same, as also the pursuer to have resiled. But this process is of count and reckoning even, resulting off the others, wherein the defenders were general.

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1650. *January 24 and 25.* MUSCHET against GIB.

IN the process, Muschet against Gib, the defender, having proponed a \* \* \*, alleging payment made first by one, whose declaration the pursuer did purchase in the contrary, and then by another,—the Lords put a great penalty upon the defender if he should succumb.

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