

band to a disposition of his wife's liferent lands belonging to him *jure mariti*, be interpreted a passing from the liferent, or a discharge thereof.

*Advocates' MS. No. 189, folio 101.*

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1671. June 30. Anent COMPETENT AND OMITTED.

COMPETENT and omitted fails, *1mo*, where the defences are difficult, and the cause was before an inferior judge; *2do*, where it was in a suspension, unless it was of multiplepointing, because a man may suspend oftener. This is now altered by the Lords' decisions, see *alibi*, providing they be new reasons not proponed in the former; neither will one be admitted to allege that they were competent in the first suspension, but there omitted. *Vide supra No. 49, [1st July 1670;] infra 484, [Wright against Sheill, June 1676.]*

*Advocates' MS. No. 190, folio 101.*

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1671. June 30. CUTHBERTSON *against* WILLIAM CUNYGHAME.

IN Cuthbertson's case against William Cunyghame, (the informations whereof I have beside me,) the Lords found this allegiance relevant to liberate from intrusion and spulyie, *viz.* that the defender entered to the house alleged intruded into, and wherein the goods spulyied were lying, by warrant from pursuer's wife, (he having only right thereto *jure mariti*,) she delivering to him the keys thereof, and setting to him the house at the just avail, so that she was *utilis negotiorum gestrix*, and did her husband's affairs profitably; and that this might be proven, *prout de jure* or by the wife's oath, which may be taken in prejudice of her husband, when it is *ad distractum*, and to liberate another *a spolio*, but not *ad contractum* or to burden her husband with a debt: neither did they regard whether it was done by order and warrant from her husband or no.

*Advocates' MS. No. 192, folio 101.*

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1671. June 30. Anent LIBERATION OF A CAUTIONER IN A SUSPENSION.

WHERE a decret suspended is turned in a libel, if the defender be unwilling to debate presently, then he will get up the instructions and verifications of that decret to see, as if it were in an ordinary action; and the cautioner in the suspension will be freed.

*Advocates' MS. No. 193, folio 101.*