

suit, being served heir of provision to the father, (*vide supra*, num. 490 and 550,) he cannot pursue, because the obligation is extinct and confounded. And there was no rational or legal way of securing the provision he got from his father, from his father's posterior debts, but by serving an inhibition against the father upon that obligation, though the remedy be a little harsh.

On the 27th of July 1677, both parties having submitted one point of £1000 sterling, in variance betwixt them, to the President, he arbitrated 16,000 merks with consent of both parties; and, having reported it to the Lords, he obtained their authority interposed thereto. *Advocates' MS. No. 609, folio 294.*

1678. *January 22.*—This day Hay of Drumalziar's action against the Earl of Twedale his brother, was advised, and the Lords modified the price of the lands to 16 years; and thereafter, on a bill given in by Drumalziar, they raised it a year's purchase more, *viz.* to 17, which was thought a very competent price for lands in Twedale. See this more fully observed *alibi*.

*Advocates' MS. No. 712, folio 316.*

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1678. *January 25 and 26.* The DUKE of LAUDERDALE *against* The EARL of TWEDALE.

THIR two days were wholly consumed almost in the Inner-House (yea, they sat till one o'clock, which some affirmed unlawful,) in advising the Duke of Lauderdale's action against the Earl of Twedale, about the teinds of Pinky, within the lordship and regality of Mussleburgh, in which there were three points; one of the tack, another of the heritable disposition, and if it was annexed property, and the third was, if it was prescribed, since, in the English usurpation, the Duke of Lauderdale was *nec valens, nec volens, nec potens agere*. Of this see more *alibi* in thir collections. *Advocates' MS. No. 714, folio 316.*

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1678. *January 29.* JOHN LAMB *against* The EARL of CARNWATH.

IN the action pursued by John Lamb, merchant in Edinburgh, against the Earl of Carnwath, on the passive titles, for payment of the sum of contained in a decret *in anno* 1668, obtained by Lamb's cedent against his father:

ALLEGED,—The decret was for a remain of the maintenance in 1649; and, by the Act of Grace in March 1674, all these taxations are discharged.

ANSWERED,—The Act contained an exception, where bond was granted for them; and here a decret compearing was obtained for it long before the Act, which was equivalent, since the same execution passed on decreets that passed on bonds. Next, they were only seeking relief of what they had paid for Caruwath's father.

REPLIED,—*Statuta sunt stricti juris*, and so cannot be extended to the case of decreets.

This point being reported to the Lords by Harcous, they found the debt fell

under the Act of Grace, and therefore assoilyied. *Vide* the information in it. *Vide supra*, num. 667, [November 1677.] *Advocates' MS. No. 715, folio 317.*

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1678. *January 29.* The TAILORS of EDINBURGH *against* NICOL HARDY.

THE Tailors of Edinburgh obtain a decret of neighbourhood, as to their land in the Cowgate, against Nicol Hardy, writer to the signet; who presents a bill of suspension, bearing, that his brewhouse and building was conform to a contract betwixt his father and the incorporation in 1642, and betwixt himself and them in October last.

The Lords ordained Harcouis to visit the ground and report; who did so, and settled them in sundry of the controverted points, and ordained Nicol to rectify some parts of his building. And there was an ambiguous clause in the last agreement, that he should raise it no higher than the present building. See the informations of it beside me. *Advocates' MS. No. 716, folio 317.*

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1678. *January 29.* AGNES WILKY, Relict of Henry Morisone, *against* CHRISTIAN MORISONE and GEORGE STUART her Husband.

AGNES Wilky, relict of Mr Henry Morisone, writer, obtains a decret against Christian Morisone, sister and heir to the said Henry, for implement of her jointure, and against George Stuart of Auldhame, advocate, her husband, for his interest; and thereon charges and denounces them both. Then, Christian dying, Agnes pursues George Stuart for payment. The Lords, on my Lord Pitmedden's report, found George, the husband, was not liable, except only *in subsidium*, in case payment be not recovered of the heir of the wife; and that the heir of line to Christian behoved first to be discussed, and so gave him *beneficium ordinis discussionis*.

Then Agnes gave in a bill, craving the interlocutor might be re-considered, and George at least might be principally and immediately liable *in quantum* he was *lucratus* by the marriage. This day the Lords refused this bill.

Mr Francis Montgommery was just stated in the like case, in a pursuit moved against him by the Lord Melvill.

There was another point debated in the said Agnes her process. She was provided to an annualrent of 400 merks furth of a tenement, which the heir caused to take down as ruinous; she contended he behoved either to rebuild it or be personally liable. The Lords ordained both parties to adduce probation anent the condition the houses were in the time of the contract of marriage; and if what the heir did was incumbent for a provident man, or if he willingly took down the houses when there was no necessity for the same.

The said Agnes, in the foresaid bill, urged the Lords' answer *in jure* upon the point; but they refused it. See the copy of the bill beside me. *Vide Dury, 17th January 1622, Hamilton and Sinclair; 5th July 1623, Brown and Wright. Advocates' MS. No. 717, folio 317.*