

1649. July 14. MARGARET FYFE and MAGDALINE BALVAIRDE *against* GEORGE ACHINLECKE.

IN the suspension at the instance of Margaret Fyfe and Magdaline Balvaarde against George Achinleck, who had obtained decret for heirship goods out of the moveables belonging to the goodsir; the reason was, That although they compeared and declared anent having the particulars, yet, they being but ignorant women, alleged now, that he could not have any heirship, his goodsir neither being baron, burgess, nor prelate; and, although he had, as being such a person, yet there was more due to themselves, by their contract of marriage, than would exhaust all. Whereupon some fell idly to dispute anent the particulars of heirship, it being ordinary to refer that to the roll in burghs royal. Others would allege, that heirship should be given to any that were retoured, even generally; and would hear advocates dispute thereon, suppose against a fundamental law.

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1649. July 14. SMITH *against* NICOLSONES.

IN the suspension, Smith against Nicolsones, minors, the reason was, That he, being executor, had the benefit of inventory, and could pay no more of the defunct his debts than did exhaust the same; but so it was, that all was exhausted by decreets lawfully obtained. The Lords found, That he behoved to say that payment was already made before the intencion of the chargers their action: for, if payment was not yet made, it behoved him yet to suspend against them all in a multiplepinding, notwithstanding that his informal decret of exhausting the inventory, as he calls it, obtained before the Lords; that the several creditors their reasons of preference may be discussed. So the Lords found the debtors orderly proceeded, but qualified in manner foresaid; and that the executor get suspension through caution.

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1649. November 8 and 9. The CREDITORS of the EARL of MORTOUNE, Supplicants.

THERE was a bill given in by the creditors of the Earl of Mortoune, That, in respect he dwelt in Orkney, where rebellion against the estates was reported to have been moved; likeas, the estates used proclamation against him and others, his complices, for repressing the same; and the said creditors being to cite him, apprehended to do it personally or at his dwelling-house, *quod non daretur tutus accessus*, but craved of the Lords that they might do the same at the cross of Edinburgh and pier and shore of Leith. Which they found could not be done by the laws; yet granted, that, in reforming their supplication, they should seek him to be cited at the head burgh of the next adjacent shire *ubi pateret accessus tutus*, as was ordained in the like cases anent citation

of Highlanders and Islesmen, rebels, together with an intimation to be made to his procurators ; Jam. VI, Parl. —.

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1649. November 9. The CREDITORS of JOHN DAVIDSONE *against* JAMES HARRIS.

THERE being a certain sum of money deponed, the time of the sickness, in the hands of umquhile John Davidstone, by one Harris, in the Cannongate, the said John lent it out, as was alleged, to the Laird of Lugtane ; and the creditors of the said John pursuing his relict for exhibition of the bond, the said James Harris was admitted, for his interest, to seek delivery of the same to him, he proving *has fuisse ipsas species depositas*. Which the Lords did ; in favour of *depositum*, in such a perilous time.

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1649. November 17. LAIRD and LADY RENTONE *against* GEORGE STEWART.

IN the action of suspension and reduction at the Laird and Lady Rentone their instance against George Stewart, pursevant, the reason [was] That the bond given by the lady, while she was *in familia paterna*, without the consent of her father, as lawful administrator to her, should be null, as that bond which is given by a minor who had curators, if it be given without their consent. The Lords found it relevant, notwithstanding it was alleged, That the father's administration is not of that authority that a curator's is, since the curator is taken sworn *de fidei administratione*, and likewise sets caution. *Item*, That, by our practise and custom in matters of consequence, curators may be given *vivo patre* by them who gift any thing to a pupil or a minor, or to secure any bargain with a pupil or minor ; and also, if a father be to redeem his own gift from a minor : *et curatorem habenti curator non datur, nisi prior sit remotus* ; because *reipublicæ interest* that the king's dispositions and deeds of any part of the principality, during the prince his less age, as administrator, should stand good and lawful. And, to descend to private men, it is very usual that the father does things as lawfully and lovingly for his bairn as any curator can do ; and, as he will defend him from injury and wrong in body, so he will keep him from harm and skaith through deception and fraud in matters of subscribing bond or discharge : as is in *L. Cum furiosus 7 cod. de Cur. Fur. Quis enim talis affectus extraneus inveniatur ut vincat paternum ? Vel, cui alii credendum est res liberorum gubernandas, parentibus derelictis ? Et pater videtur a Deo tutor naturalis datus ; ab homine vero, testamentarius ; a lege, tutor legitimus ; et a patre patriæ, dativus. Nec datur restitutio in integrum contra patrem, propter debitam reverentiam.—L. 2, Cod. qui et adversus quos*. For the father gives a tutor testamentar, who is not obliged to find caution *de fidei administratione, secutus ejus fidem ut suam*. But it would be here provided against the father, who may be *prodigus* ; and suppose he be not so declared, that, in the case he contract so much debt that his estate be all