

1649. *June 16.* BURNET *against* MURRAY.

IN the cause of suspension at the instance of Burnet against Murray, anent the suspender's bond, and his cautioner, containing £4 sterling for the failyie of every man undelivered at Deipe (for whom he got only 20 shillings sterling,)—the Lords found the letters orderly proceeded for the whole; because he referred to the charger his oath, that he was content to take them at Kirkcaldie, where none was to receive them. Whereupon commission was directed to France, but had no effect; and the said charger coming home to the country, by his oath denied the same. And, likewise, in favours of Montgumerie of Longschaw, the whole penalty contained in the bond was decerned *ex pacto conventa*. *Item*, In favours of the Laird of Bochrum.

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1649. *June 19.* ROBERT MILLAR *against* ROBERT STEWART.

IN the second suspension at Robert Millar his instance against Mr Robert Stewart, charger, for his tocher,—it was found, That the letters ought to be put to farther execution; notwithstanding the reason upon the interest of John Millar, alleged executor confirmed to umquhile Janet Millar, his sister, spouse to the charger; the suspender being administrator to the said John, who is the executor decerned, and willing to compensate, and, for liquidation, referring it to his oath; because the charger has many exceptions anent his wife her testament, as that which dips upon the husband's privilege of giving up his debt, till exhaust the inventory. And, because there was a bairn, who lived seven or eight days after the mother, suppose the father was negligent to confirm the bairn executor to its mother, it was excusable *in tam recenti luctu*. So that it is very disputable, whether the division ought to be bipartite or tripartite. Yet the Lords delay the extracting of any decret, till the matter anent the testament be discussed before themselves; which they do advocate according to the advocacion raised by the charger; and which in the matter of not-liquidation opposes *quod per eum steterit*.

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1649. *June 19.* The BAILIES of QUEENSFERRIE *against* SAMUEL WILSONE.

IN the suspension raised by the Bailies of Queensferrie against Samuel Wilson, charger,—the Lords found the reason of compensation relevant, notwithstanding the charger alleged, that he was not their burgess, but they had most maliciously riven his burgess ticket, and so ought not to be stented by them; because the act whereupon the stent-roll, verifying the compensation, did proceed, although it be posterior long to the second suspension, purchased upon assignation, was, in the 1636 or 1637, subscribed by the charger, with many others; he being then a chief actor, for the relief of the debt then contracted

in opposing them who strove to hinder the town to be made a burgh-royal. And so the Lords ordained so meikle to be given up again to the consigners, and the rest to the charger; and so suspended the letters, if he had no farther to say against the justness and quantity of the debt, or his portion contained in the stent-roll.

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1649. *June 19, 20, and 21. THOMAS YOUNG against JAMES WRIGHT.*

IN the action of removing at the instance of Mr Thomas Young against James Wright, his vassal, in some particular lands of Lenie, expressly designed and bounded in his infestment; the defender did except, that he could not remove from certain parcels of grass; because he and his authors, past memory of man, at least thirty or forty years, had the said parcels as parts and pertinents of the lands contained in his infestment. Whereto it was replied, That his infestment, so bounded, could not admit such pertinents; because he offered him to prove, that they lay discontinuous from his lands; and the said pursuer ought to be preferred, being *in libello*. Which the Lords admitted.

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1649. *June 21. PATRICK MOUNSEIR against JOHN KILPATRICKE.*

IN the suspension of Patrick Mounseir against John Kilpatricke, for the duty of a tack set to him by the said John, the Laird of Closeburn, maker of that right, by a former tack to the said John, would have compeared for his interest, to have annulled or taken away John his right of tack, by proponing some exceptions, and especially improbation; and that, because the same Mounseir was, immediately before, tenant to the said Laird. But the Lords found, That he had no interest to hinder the payment of the subtack-duty; let the Laird reduce or improve as he will be served.

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1649. *June 21. WILLIAM DAWNIE and OTHERS against JOHN CRAIG.*

IN the advocacy raised by William Dawnie and some tenants of Leith against John Craig, cook, of a process before the Sheriff of Edinburgh, for outquiting the said William his comprising by count-making with the said John, who had comprised the legal;—the Lords thought best to remit it to the sheriff-deputes, being men of understanding; notwithstanding the said William declared, That his comprising was to the minor's behoof; and that the minor hath been much circumvened, or else his predecessor, in giving such a bond to the said John. Whereupon it was thought more formal to intent action, if he thought himself prejudged.

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