

1649. *July 3.* HERREIS and His SPOUSE *against* GIBSONE.

IN the spuilie pursued by Herreis and his spouse against Gibsone, the exception of lawful pointing was repelled, in respect of the reply, That the pursuer offered him to prove, that the gear spuilied, as is libelled, was bought by the pursuer, and brought upon the ground possessed by the woman whom he was to marry, and so belonged not to the executors of his defunct debtor. And where it was duplied, That they offered them to prove, that those same goods craved were in their own possession;—it was triplid, That they had brought them back from one Greirsonne, who had given bond for the same to the defenders. Which also was sustained in fortification of the reply.

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1649. *July 3.* MOODIE *against* ROLLOCKE.

IN the suspension pursued by Moodie against Rollocke, the said Moodie was not reponed to his oath, but decret of exhibition sustained, upon that he had confessed the having of the writs, in judgment; suppose, when a day was assign-to him to depone, he did absent himself, and so was holden as confessed.

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1649. *July 3.* WATSONE *against* CRAWFURD.

IN the suspension by Watsonne against Crawford, the probation of the decret given by the commissaries of Edinburgh adminiculated by the pursuer his oath, as their use is, *ad probationem semiplenam jvandam*, was sustained.

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1649. *July 3.* SOMERVAILL and GARDINE *against* JOHN STRATOUNE.

IN the advocacy by Somervail and Gardine against John Stratoune, there was a reason of iniquity libelled, that the commissaries had repelled their exception of prescription in the Act 83, Parliament 6, James VI. Which the Lords found no iniquity, in respect of the reply, That it was for the entertainment of a pupil recommended by a letter of the father from Germany to the

defunct, whose executor pursues for the same. So the Lords remitted the process, reserving the modification to themselves; because the mandate was in writ by his letter; and sustained the same, *4th July* also.

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1649. *July 3.* The EXECUTORS of COMBRIE *against* THOMAS RENNIE.

IN the action pursued by the executors of Combrie against Thomas Rennie, the exception upon a discharge, given within a few days after the date of his bond, suppose before the day of payment, *pecunia jam representata*, suppose not the whole; was found relevant, albeit the said discharge did not say *in satisfaction of the said bond*: except the pursuer would reply that the defender was *debitor aliunde: et debitori licet solutum imputare in duriores sortem*; as rather to pay a bond bearing annualrent than one without the same or account; but here payment was advanced before the day. The Lords would have had the discharge produced; but the man that had it was said to be out of the country; and so a day was assigned, reserving all *contra producenda*.

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1649. *July 3.* WARDLAW *against* SIR THOMAS KER.

IN the process by Wardlaw against Sir Thomas Ker, the decret against Sir Thomas Ker was found wrongously given out, and disconform to the summons; for, there being a process depending at the instance of umquhile Mr John Wardlaw, father to the pursuer, wherein the said Sir Thomas had an incident running, the said Andrew, being made assignee, did intent a transferring of that process; and yet the clerk gave out a transferring of the contract of marriage, cutting the said Sir Thomas short of his diligences, who was but oy of the cautioners.

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1649. *July 3.* JOHN BOYD *against* PETER and HAMILTOUNE.

IN Peter and Hamiltoune's bond to John Boyd, the words "conjunctly and severally," omitted in the obligation, neither of them being cautioner, were thought *correi debendi et debitores in solidum alteruter*; because, in the end of the bond, there was a clause to relieve ilk one other *pro rata*.

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