

Mr James Aytoune, his uncle, against his brother, Mr David Aytoune ;—it was excepted, That he cannot pay to the pursuer the 500 merks contained in his bond made to his uncle, because he offers him to prove that he paid as much for his uncle, and relieved his bond ; the which must compense the sum acclaimed. The which the Lords would not admit, unless he instructed that the sum paid by him, since the date of his own bond, was at his uncle's direction, and out of the defender his own money. Likeas, he must have assignation thereto, and comes properly against the cedents. Yet, it may be said, " Let Inchdernie, after lawful distress, seek his warrant."

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1649. *July 12.* POLLOCKE *against* The EARL of NITHISDAILL.

IN the transferring craved at the instance of Pollocke against the Earl of Nithisdaill, the Lords decerned in the transferring ; but would grant a suspension, that the Earl his person should be free, and that count should come in by way of suspension, to be granted to a short day : the assignee made to the Earl of Nithisdaill, his behoof, by the Earl of Dirletoune, in whose favours the said Earl of Nithisdaill had renounced ; the said assignee, I say, with the Earl of Nithisdaill, being obliged, that that preference shall not be prejudicial to their account, or any subsequent adjudication in favours of the pursuer.

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1649. *July 12 and 13.* CHRISTIAN DAVIE, and JAMES GIBSONE, Her Spouse, *against* JAMES WRICHT.

IN the suspension by Christian Davie, and James Gibsone, her spouse, against James Wricht, the reason was, that decret was given against her, clad with a husband, he being out of the country, and not cited. Where to it was answered, That litiscontestation was made in the cause before their marriage, and referred to her oath, &c. suppose there intervener before the decret meikle of a year, and suppose the marriage was celebrated a half-year before the said decret ; *quia subsequens matrimonium non debet deteriorem facere actoris conditionem, judicio sic mutato.* And the Lords sustained the decret.

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1649. *July 13.* DAVID MURRAY *against* SIR JAMES HAY of SMITHFEILD.

IN the action at David Murray his instance against Sir James Hay of Smithfeild, upon a decret-arbitral given at London,—it was excepted, That although the blank was subscribed by the parties, and by the judges after the filling up, yet the submission was never subscribed by the parties, but only accepted