comprised from him; the minor, in his adventitious goods, be not prejudged. *Item*, If a minor use trade or merchandise. *Item*, If the father be absent forth of the country, so that the minor's business cannot be expede, &c. Neither think I this exception of nullity can be well received by way of suspension, as in some nullities is usual, being contained in a writ itself; as, namely, where a husband and wife subscribe a bond for borrowed money; because, in our case, it must abide probation, both of the father's life, the time of the minor's subscribing, and that he was minor then; for that which the Romans called *senatus consultum Macedonianum* is of long last, *donec filiusfam. fuerit emancipatus et a patria potestate liberatus.*

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1649. *November* 24 *and* 27. The LAIRD of RENTONE *against* LADY AYTOUNE; and RENIE and MAKANE *against* CUNINGHAME.

THERE was much dispute thir days *respectivè*: the 24th day, in the Laird of Rentone his process against the Lady Aytoune; and on the 27th, in the process Renie and Makane against Cuninghame, for some chalders of salt: anent insisting upon process after litiscontestation, and proponing of exceptions to be verified instantly, after witnesses had been received, and probation renounced. But the Lords, as they thought the first dispute idle, so they would not, in the other, infringe nor loose the form of process, except the pursuer would agree thereto. Yet they gave liberty to propone their exception, by way of suspension, and to prove it as in a reduction, the same consisting *in facto.*

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1649. *November* 27. ROBERT RAE and ROBERT PORTEOUS *against* The EARL of MURRAY.

ROBERT Rae and Robert Porteous, pursuing the Earl of Murray upon his bond of 840 merks, for wainscot, dated in December 1643, not payable till February 1644;—there is a discharge, granted in January 1644, obtruded by the Earl; which his servant, Mr David Stewart, purchases, bearing him to have paid 80 merks for 100 deals, which the granter confesses satisfied, and all other timber coft by the said Earl. But the Lords did not think that the word timber would comprehend the wainscot, but that the bond should specify discharged or redelivered, since it contained a great sum, and the sum contained in the discharge which was received was but very mean.

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1649. *November* 27. MARION WHYTE *against* HELEN MITCHALL.

IN the suspension, Marion Whyte against Helen Mitchall, who had decreet

for a legacy left to her husband by her brother, upon condition that he should renounce all right that he could claim to his succession in favours of the said Marion Whyte, whom he had left his executrix,—one reason was proponed, that the said Helen should warrant according to the condition foresaid. But the Lords found, That it was sufficient to her to warrant for the sum received, seeing her husband's brother was dead, and his children very young; *et factum hoc non satis præstabile ut alienum.* The other reason did take away the legacy; in the which it was alleged, That the testament was exhausted by creditors who had gotten decreet, as was alleged. *Sed amplius inquirendum censuerunt Domini;* because it was opponed to those decreets, that they were simulate: the libel being referred to her oath only, and she holden as confessed; the which cannot be thought relevant to exhaust a testament.

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1649. *November* 27. WILLIAM KEITH *against* LADY MARSHALL.

IN the advocation pursued by William Keith against Lady Marshall, pursuer of a removing before the sheriff, but had not warned ———— Forbes, his mother, tackswoman, who had a tack from Earl George fifty years since, suppose alleged to have been denuded of the fee before the setting of the same; —the Lords thought good to advocate that process, for trying of both their rights, after so long alleged possession.

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1649. *November* 28. JEAN BOSWELL *against* ELIZABETH HAMILTOUNE, Relict of JOHN KIRKALDIE.

IN the process pursued by Jean Boswell against Elizabeth Hamiltoune, relict of John Kirkaldie, for 300 merks addebted by the said John to the said Jean, as intromissatrix with her umquhile husband's goods and gear;—it was excepted, That there was an executor confirmed; and, suppose he died within two or three months thereafter, yet there was another confirmed, *quoad non executa;* being a creditor, who had obtained sentence against the relict for those goods intromitted with by her, and that before the intention of the pursuer's cause. But the Lords would have all the testaments, and decreets or other writs, produced: because that common exception is receivable, where executors, merely representing the defunct, are confirmed, and not a creditor; especially seeing the first executor was the defender's brother, and the second, John Kirkaldie his son or nephew; and it seems collusion for to purge the universality of intromission two three years after the said intromission.

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