

1649. *November 29.* STEWART *against* CUBIESONE.

IN a process betwixt Stewart and Cubiesone, it was alleged, That the title of the testament, confirmed in Glasgow, could not be sustained, because the defunct died upon the sea ; but the Lords thought that such a case was not reserved by the Act of Parliament to the commissaries of Edinburgh.

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1649. *November 29.* MONTGOMERIE *against* DALRUMPLE.

IN the suspension by Montgomerie against Dalrump, compensation for something assigned by the principal, Josia Stueart, to his cautioner, Montgomery, *in favorem fidejussoris*, and a recompensation opposed by Dalrump, was rejected.

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1649. *November 29.* The LAIRD of CLOSBURNE *against* MAJOR GILPATRICK.

IN that great dispute of a redemption, used by the Laird of Closburne against Major Gilpatrick,—the order used at Martinmas 1648 was sustained, without a real numeration, upon production of many bags of money, sealed, at the Whitsunday before, with the Major's seal, tickets of his own writ being yet to be found within.

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1649. *November 30.* LUMSDENE of BLANERNE *against* PATRICK MAER.

IN the suspension against Maer, above mentioned, [page 423,] they proponed, on an eik, that the debt was paid by him, whom they were obliged to relieve, at least, by some other of a number that were bound to umquhile Mr John Arthur, from whom the said Maer got assignation. And the Lords, that there should be no new suspension, sustained it to be proven by writ or oath of party, giving only one term of two months.

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1649. *November 30.* PATRICK CHAMBERS *against* HUGH LINDSAY.

HUGH Lindsay, commissary-clerk of St Andrew's, obtained decret to make furthcoming a sum arrested by virtue of the commissary's precept, in the hands of Patrick Chambers, as owing by him to James Goodlette, who was debtor in a

certain sum to a friend of the said Hugh's, to whom he was alleged executor ; but the same being suspended by Chambers upon certain nullities,—the Lords did not only repon him to his oath, but annulled the decret, because there was no mention how his friend's debt was proven against Goodlette.

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1649. *November 30.* FRANCES HAY *against* GLENKINDIE.

IN the suspension, Frances Hay against Glenkindie,—find the decret obtained against the said Frances to have been done *spreto mandato judicis*, suppose the sheriff was charged, and a new cause alleged to have been intended ; because, once advocated, aye advocated, while the advocacy be discussed, even suppose the reason of consanguinity did cease, the first sheriff being removed. Yet the Lords thought good, that the suspender, upon twenty days' advertisement, should come and answer here in the principal cause, without farther citation.

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1649. *November 30.* HAMILTOUNE *against* KELLO.

THERE was a long dispute betwixt Hamiltoune and Kello, for reduction of a bond and disposition, alleged made *in lecto ægritudinis*, at least not delivered while then, qualified by sundry presumptions of retained possession : inserting the said disposition in the register, with an ante-date : *item*, of subscribing as witness to a contract of marriage, wherein, of his certain knowledge, the wife and the children to be procreated and the disponder's heirs whatsoever were to be infert. Which process and dispute may be seen in the clerk his hands, but nothing yet decerned in by interlocutor.

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1649. *December 1 and 4.* PATRICK CHAMBERS *against* HUGH LUMSDEN.

THE reason of suspension by Patrick Chambers against Hugh Lumsden, who, by the commissary of St Andrews his precept of arrestment, the said Hugh being commissary-clerk himself, had obtained decret to make the arrested goods forthcoming, the commissary having subscribed it for his clerk ; the said reason, I say, founded upon sundry nullities ; but specially, that there was no probation of the debt against the principal debtor, nor warrant of instruction mentioned in this decret charged upon ;—the same was, by the Lords, found relevant, and both commissary and clerk found to have done wrong.

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