

Moubray and Jarvie, Moubray was preferred, upon a prior disposition, suppose a posterior seaisine, against Jarvie his son, who had a prior seaisine by virtue of a posterior disposition, *quia inter conjunctas personas*; and whereas Jarvie's contract of marriage, bearing to infest the heirs of that marriage, was alleged to fortify that disposition, he could not be heir till his father died; and then, also, it behoved him to warrant his father's deed.

Page 118.

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1649. December 29. JAMES ANDERSONE *against* JOHN ROB.

IN the reduction of John Rob his service and retour by James Andersone, it was alleged, That the said James was son to James, who was son to Margaret Rob, the sister of the defunct's father, who had no brethren; and so John Rob his retour, whereby he was served heir to the defunct, as brother's children, must fall and be reduced. The Lords, before answer, would have some documents and witnesses, *hinc inde*, to be produced; and even of the assysours, who are not only judges, but witnesses: also who may be challenged, even as false witnesses, *et quod temere jurarint super assisa*. But [this] is much neglected in this age; and the old law, well constituted by our predecessors, shamefully eluded by general services, serving *affirmativè*, if none compear in the contrary, suppose they never knew the purchaser of the brieve his kindred; where it should be *per fideles homines patriæ qui optime norunt*.

Page 119.

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1649. December 29. LOWRIE *against* M'CALL.

IN the reduction, Lowrie against M'Call, upon the commission of an irritant clause for not-payment of feu-duty, the Lords thought it somewhat rigorous, that, because the superior offered what the buyer, within this two or three years, had given for the land. The Lords desired them to tryst upon it before some of their own number.

Page 120.

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1649. December 29. CLAXSTONE and WALDO *against* ROBERT FOULES.

IN the process, Claxstoune and Waldo against Robert Foules, for certain wares alleged directed to be sent home by one Buchane, servant to John Rinde, and received by the said John or Robert Foules, his partner, and converted to their use, which could not be proven but by the said Robert his oath,—the Lords absolved him, in respect of his deposition denying all, except only that anent the copartnery or society; which, notwithstanding, was mistick, because not

perfected in writ, while long after the alleged receipt of the goods, suppose there was an intended bargain and contract before, which took a time to — and apprise the goods that were in the booth.

*Page 120.*

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1650. *January 1.* JANET WILKIE, KATHERINE and JANET RAMSAYE, THOMSONE, and MAXWELL, competing.

THE tenants of the lands belonging to umquhile John Ramsay, trumpeter in the Canongate, suspend, upon a multiplepounding, against sundry persons pretending right to the maills; wherein compears Janet Wilkie, Katherine and Janet Ramsayes, one Thomsonsone, &c. But the said Janet Wilkie was preferred upon an infeftment of annualrent for 1000 merks to her father in liferent, and to her in fee, in the year 1624; suppose it was alleged by Ramsayes, that their uncle, from whom they had right, was infeft a year or two before: as also Thomsonsone, because the said Wilkie obtained pointing of the ground, and so came in possession before them, Thomsonsone having gotten but a personal decret after Wilkie, and having comprised also thereon; which comprisings behoved ever to carry with the land the annualrent burdening the same. And where Maxwell, the mother, put in a reason, that she being liferenter, the said Wilkie her infeftment could not carry the maills: it was answered, That the said Maxwell, if she had any liferent, did consent to have infeftment.

*Page 121.*

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1650. *January 1.* KARKETTLE *against* JOHN SPOTSWOOD.

IN the suspension, Karkettle against John Spotswood, the reason that the decret whereupon Spotswood charged being for 1800 merks, was satisfied by the offer of 1000; in respect of a posterior minute passed between the parties, by the which Spotswood was obliged to give an assignation to the whole decret against the heirs and executor of the defunct;—that reason was not found relevant to grant assignation against the executor, being the brother of the relict and of John Spotswood, charger, the which relict was executor to her husband; since that was never the meaning of the contractors in the minute, that the charger, who had obtained the decret, as assignee, from the relict, to that clause of her contract of marriage, should give assignation against his brother, her executor: but because the son of the defunct was alleged to be yet alive in Poll. and might come home and be heir to his father, notwithstanding that the suspender, against whom decret was obtained, was served to the defunct, his brother; and that, if it so happened, the suspender might get his relief of him, by virtue of the assignation, if his service were reduced and annulled.

*Page 122.*