

of Aire; so that, the same having been discussed before the said bailies, it needed no farther declarator. *Page 129.*

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1650. *January 3.* The LAIRD of EDMISTOUNE *against* ADAM MUSCHETT.

IN the suspension at the Laird of Edmistoune his instance against Adam Muschett, assignee constituted by Katherine Haggie, the reason was not found relevant, upon that, She had made umquhile Mr David Williamsone her assignee, and that he had obtained decreet against him, for some years bygone, of that annualrent payable to her during her lifetime; because the said Mr David his assignation was only for 700 or 800 merks, which might have been paid, and so his right was expired; likeas the suspender, since syne, hath paid to herself sundry years, upon sufficient warrandice; which she and her assignee yet offer.

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1650. *January 3.* MR ALEXANDER LISKE *against* PATONE.

IN the suspension of double pointing, Mr Alexander Liske and Patone, the said Liske alleged an infetment in the year 1603, given by his father, reserving his own liferent; and Patone, being a creditor, alleged an infetment given by the father in the year 1626, together with a ticket, dispensing with the said infetment given by the superior, that the same should infer no recognition; but without his confirmation. (Where it is to be inquired, if the same infetment was given to be holden of the superior, which would be public, if confirmed; but if it be base, it remains base, notwithstanding the superior's confirmation.) Then Liske alleges, That his father's possession being his while he lived, he, after his decease, obtains decreet of removing, which is civil possession: likeas, thereafter, he obtains also natural possession, by setting a tack to the tenant. Again, Patone alleged possession, by payment of the annualrent, and that Liske, as factor for his father, did pay him the same; and farther, that, in the year 1646, there being a double pointing raised by the tenants, Patone was ordained to be answered and obeyed. Whereunto Liske answered, That he did not compear in that decreet to produce his right: the which he produces now, and oppones the same together with his possession; likeas the said Patone has infetment of other lands, which are able to pay him his annualrent.

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1650. *January 4.* FORBES of BALNAGASKE *against* FOULLERTOUNE of KINNABER.

[*See page 449.*]

IN Kinnaber and Aslowne their process, it was farther alleged, That although *debitor non præsumitur donare*, yet *debitor potest donare*: likeas it is offered to be proven, that the disposition whereupon the infetment renounced did proceed, was

for love and favour, without relation to the 4000 merks provided by the contract of marriage, which is now in question. *2do.* That the intention of the disponent was to settle his succession amongst his children, and other successors after them. *3tio.* That it was for sums of money received, or granted to have been received, by the father. And so it was desired that the said disposition might be produced. Whereunto it was answered for the disposition, That it was not Kinnaber's evident; and, as to the reason of love and favour, the father might have secured [him] for that same cause in the 4000 merks controverted, by giving him his estate by that disposition, and the providing thereby for his succession; in case his son of the first marriage had heirs-male of his body, the said Gideon's second son, to whom the disposition was made, was to get 12,000 merks, the triple of the sum controverted; and as to the grant of sums recovered by the father, it is but cast to, *dicis causa*, since the receiver of the disposition was scarce past pupillarity, and had no adventitious goods or money to give out; but the father might well acknowledge money received by him, who was debtor in the said 4000 merks. And, in respect of this duply or quadruply, the Lords stood by their former interlocutor, and assolyied Kinnaber.

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1650. *January 4.* WILLIAM WATSONE *against* THOMAS and ALEXANDER HALIBURNTONES.

IN the action by William Watsone, factor for Robert Rinde, against Thomas and Alexander Haliburntones, as intromitters with the goods and gear of unquhile Andrew Brand, debtor to the said Robert;—it was excepted, That there was an executor confirmed to the said Andrew before the intention of the cause. Whereunto it was answered, That a creditor [who has] confirmed himself executor, is not such an executor as is to be understood in that maxim of our law; since that confirmation is but of a late beginning, and who confirms commonly but so much as may pay himself, and is answerable for the surplus to any who shall confirm, and so is executor *κατα τι*. But it is to be understood of him who is executor, *δλως*, whether by being nominated or surrogated; whose confirmation, before the intention of the cause, does purge the vitiosity of intromission. Which the Lords found relevant.—*See page 472.*

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1650. *January 4.* MARGARET LIVINGSTONE *against* The TENANTS of LARBER.

IN the action, Margaret Livingstone against the tenants of Larber, called by her for wrongous intromission with the teinds assigned to her by her father, and whose assignation was intimated to them;—it was excepted, That they had made payment, *bona fide*, to the donatar to her father's escheat, or his assignee, who had obtained decret against them, and had discharged them upon their depositions; as also, who was ordained to find caution to all parties having interest, in case the tenants become *non solvendo*: notwithstanding that she objected,