

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.

Page 132.

---

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.*

Page 133.

---

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,

That these teinds [were] acquired by her father, not only since the rebellion, but after sundry years after the gift, and year and day thereafter: likeas she had a gift since syne, comprehending the same, because the tenants were not holden to have known that. Which the Lords sustained in favours of the tenants; leaving to her liberty to seek repetition off him who got payment. Yet it is objected, That the discharges given by a factor were not sufficient probation, unless the factory were produced;—whereupon they took a day for production of the same; and it was protested, in the meantime, That the discharges should be allowed for no more but what was really paid, in conferring them with the quantities confessed in the depositions.

Page 134.

---

1650. *January 4.* REBECCA DENNISTONE *against* THOMAS HAMILTONE.

[See page 435.]

IN that removing, at the instance of Rebecka Dennistone, Thomas Hamiltone and his tutor were ordained to produce all right that he could pretend against her, whether renunciation or any other; neither had the maxim, *quod minor non tenetur placitare de hæreditate paterna*, any place in this case.

Page 135.

---

1650. *January 4.* AGNES WOOD *against* ROBERT GALBRATH, BUCHANNAN, and GRAHAME.

IN the action at Agnes Wood her instance against Robert Galbrath, Buchannan, and Grahame, for making arrested goods furthcoming; or payment of a bond, conceived [by] Scotchmen dwelling in Ireland, and whereof the payment should have been made at a certain place in Ireland;—it was excepted, That *actor sequitur forum rei, et locum solutionis* must make the debt payable only there. To the which it was replied, Upon the constant practick of pursuing any stranger whomsoever, for execution against the defenders' goods that could be apprehended in Scotland. Which the Lords sustained. But, in the matter of making arrested goods furthcoming, it was thought there behoved a sentence first to pass, before the execution by arrestment could have place. And this bond of the English fashion can have no decret but by way of action, since it wants a clause of registration; and, if it were upon a dependence, the decret behoved to be obtained before the summons to make arrested goods forthcoming could be well raised.—See page 455.

Page 136.

---

1650. *January 4.* ISOBELL KER *against* The BAIRNS of SIR PATRICK MAKGIE.

THE action at the instance of Dame Isobell Ker, for her third, was sustained against the bairns of Sir Patrick Makgie, as intromitters with the goods and