

selves, having taken instruments that the charger's coal could not be wrought for water;—this reason, I say, was not found relevant, because the charger stands bound to them for a merk ilk day that they sat idle in his default; likeas, he offers him to prove, that when they took instruments, as is above expressed, so he took instruments also, that he had a new sink ready for working, which he was able to toom out or draw off the water within twenty-four hours. Neither were they poor, who became tacksmen to another work, and gave wages to others, whereby they strive to ruin the charger. And the like incident of interruption, by the ruin of a sink, falling out of before, they did not leave their work, in respect of the mutual bond, but wrought on till this time.

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1650. *January 16.* MR GEORGE STRATOUNE *against* THOMAS THOMSONE.

IN the suspension at Mr George Stratoune's instance against Thomas Thomson, charging for 2000 merks upon a bond made to his wife and him, at the desire of umquhile James Stratoune, his father;—the reason, that it was for the tocher due to the said Thomas, and that he had discharged to the said umquhile James his contract of marriage, and all that he could crave, and so could not be charged upon the said bond, which was given for tocher;—this reason, I say, the Lords did not respect, because they thought that the said James could not be of so short memory but he knew of the discharge: and yet, being to provide his bairns, thought that of conscience he ought to provide likewise payment of this 2000 merks, instead of the tocher discharged without payment made; or he would not have urged his son to give such a bond, and so burdened him, if he had not thought it due.

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1650. *January 17.* LITTLEJOHNE *against* DAVID BAILYIE and HISLOPE.

IN the suspension, Littlejohne against David Bailyie and Hislope, to whom the said David is curator,—the consigned money was ordained to be given up to the said David, he finding a second cautioner, by him who was found in the act of curatory, for the suspender's soverty; especially seeing the minor was out of the country, who should grant discharge with consent only of his curator. As also, the nearest of kin would have had up the same money upon caution, alleging that the minor was dead.

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1650. *January 17.* JOHN HUTCHESONE *against* \_\_\_\_\_.

JOHN Hutchesone, pursuing some minors, bairns of a second marriage, as heirs.

of provision, for registration of a bond of 200 merks,—instructs the passive title, by the father's contract of marriage; according to the which they are in possession of certain lands; and refers to their oath, in so far as shall not be proven by writ. But the Lords found, That they are not of the age that they can swear;—neither is their tutor holden to swear for them, except they would prove otherwise them to be heirs; and, to offer to prove successors to their father in lands, as use is, *titulo lucrativo post contractum debitum*, is to be understood of heirs of line. It was farther excepted, That the heirs of provision could not be convened while the heirs of line were discussed; as was alleged before in the process against Craigmillar. But it was replied, That, in so small a matter, the pursuer might spend the whole sum he claimed before he could get them all discussed. And, as we have said also in that anent Craigmillar, the practick of the country would be corrected: liberty being granted to the creditor to pursue any representing the defunct; reserving to them their relief, by discussing amongst themselves at their pleasure.

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1650. January 18. WILLIAM WATSONE *against* T. and A. HALYBURTOUNE.

[See page 453.]

IN the process at Watsone's instance against Halyburtones, as intromitters with the goods and gear of umquhile Andrew Brand,—the defenders strove to purge their vitious intromission by the gift of escheat of the said Andrew, purchased long after; alleging, That they could not be called as intromitters with the goods of the said Andrew, since he had none but those which were the King's, incontinent after his rebellion; the letters of horning bearing expressly, that the escheat-goods and rebel's moveables should be incontinent brought after the rebellion. It was replied, That could hardly be sustained, before gift and general declarator, in prejudice of lawful creditors; and practicks were craved to be sought out, and especially anent the purging of vitious intromission by such a supervenient title, sundry years after the said intromission.

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1650. January 18 and 22. KER *against* SIR THOMAS THOMSONE.

IN the suspension, Ker against Sir Thomas Thomsone,—the reason instructed by the tack, alleging, That he is only bound for so many bolls, for £8 the boll, and so must be free for the £8, *quasi electio sit debitoris*,—was repelled, and the tenant decerned in the bolls;—the charger condescending how many he had sold, and if he had enough in his barn-yard; as if the tack had said, at least £8 for ilk boll, if the victual should come never so cheap; the same being to be paid for the lands of Dudingstone.

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