

1664. *December 10.* The GOLDSMITHS of EDINBURGH *against* ROBERT HALYBURTON.

THE Goldsmiths of Edinburgh having recovered a decret against Robert Halyburton, as representing his father, for payment of a sum of money owing to them; the charge being suspended upon this reason,—that the Goldsmiths had confirmed themselves executors-creditors to the defunct, who was their debtor; by virtue whereof they had intromitted with, at least might have intromitted with, as many of the defunct's goods and gear as might have satisfied the debt owing to them. To which it was answered, That their confirmation being only before the commissaries of Edinburgh, and not before the commissary of Glasgow, within whose jurisdiction he died, the executors-creditors could do no diligence effectively. The Lords found the creditors were not liable to do diligence against the defunct's debtors, seeing they were confirmed *a non suo iudice*.

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1664. *December 14.* The RELICT of the LORD COLVILL and JAMES CARMICHAEL *against* The Heir, LORD COLVILL.

THE Lord Colvill deceasing without children, and having nominated Dame Euphan Mortone, his lady, his executor and universal legatrix, with this quality, that the heir of tailyie, the now Lord Colvill, should relieve the executor of all debts and incumbrances wherewith the same might be affected; there being a summons raised at the relict and James Carmichael, now her spouse, their instances, against the Lord Colvill, for freeing her of a number of debts for which she had been distressed, as executrix;—the Lords found the summons no way relevant; and found that the executrix should relieve the heir of all the moveable debts *secundum vires inventarii*, notwithstanding of the clause contained in the testament.

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1664. *December 14.* STORCK *against* LONDONS.

IN an exhibition of writs raised at the instance of one Storck against Londons, which Storck was tutor-in-law to some minors there, there was compearance made for the tutor-dative,—who alleged, That he being tutor-dative, the writs ought to be exhibited to the tutor-in-law, whose service and retours were not expedite *debito tempore*, especially he being such a person as to whom the pupil had several actions and processes; and that the tutor-dative's gift was expedite before the expediting of the tutor-in-law's, which was not expedite or done within the year after the vacancy, as ought to be. The Lords sustained the exhibition, without prejudice to either of the tutors to debate the competition anent their several rights.

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