

1677. *July 11.* The INCORPORATION of TAILORS of EDINBURGH *against* LITTLEJOHN'S CHILDREN and their TUTORS.

THOMAS LITTLEJOHN having left a legacy of 500 merks to the trade and incorporation of the tailors of Edinburgh, they pursue his children, as executors, &c. with their tutors and curators, for payment, before the Commissaries of Edinburgh, and obtain a decret : which thereafter they suspend on thir two reasons.—*1mo*, That they were confirmed executors-creditors to their father, on their bonds of provision and mother's contract of marriage, and so were not liable to pay legacies. *2do*, Andrew Littlejohn, the tutor, craved preference as to his legacy of L.1000.

ANSWERED to the *first*,—The oldest son behoved to be liable, for he accepted of a disposition of his father's haille estate, with the burden of debts and legacies. *Vide supra*, No. 524, *Catharine Mitchell's* case, (*December 14, 1676.*) As to the *second*, theirs had a privilege, being *ad pias causas*, for maintenance of their poor. *2do*, He was *in mala fide* to accept a legacy, being a witness in the testament, and tutor, especially so considerable a sum : *Nam qui adscribit sibi legatum in testamento, non tantum amittit legatum, sed et punitur ut falsarius.* See Mercier's *Remarques du Droit François*, pag. 193 ; see Cujace in *Paratitlo C. De his qui sibi ascribunt in testamentis* ; see the information of this cause.

Reidfuird repelled the reasons of suspension, and found the letters orderly proceeded. *Advocates' MS. No. 599, folio 293.*

1677. *July 11.* ANENT MINISTERS' STIPENDS.

MINISTERS' stipends were found to prescribe *quoad modum probandi*, if they were not pursued for within five years : which is conform to the 9th act of the Parliament 1669 ; which part of the act has hitherto been little adverted to, or proposed on. *Advocates' MS. No. 600, folio 293.*

1677. *July 11.* ANENT REFERENCES TO OATH.

THE Lords, by an act, declared, where a person referred a debt, or a reason of suspension or defence to a party's oath, and he simply denied it, the referrer, upon a bill given in to the Lords, should get L.40 Scots modified to him, *tanquam poena temere litigantis*. Whereupon there were sundry bills given in, the said Session, and the Lords decerned L.40 accordingly. *Vide supra*, 4th *January 1677*, No. 528, § 4, How a process is to be proven calumnious.

*Advocates' MS. No. 602, folio 293.*