

liam Shand's name to be expunged out of the commission, in regard he had deponed already before the Lords at Edinburgh; unless they condescended, on pertinent grounds, to urge a reëxamination. And, *4to*. They modified to the relict, and the heir, her son, for their aliment in the *interim*, during the dependence, till probation be led and advised, £1000 Scots; to be paid by the factor, on her bond to refund, if, in the event, no aliment shall be found due. What moved the Lords was, This was not in the case of a common aliment, which uses not to be granted except there be a clear visible superplus above the payment of the creditors, but was founded on the statute of James V, 1535, ordaining the wardator to aliment the ward-vassal while minor, if he has no other lands; and which was a preferable debt. Likeas, the teinds held not ward, and yet were possessed by him; and, though the donatar alleged he had no intromission, and was content to take home the child to his own family, yet the Lords remembered that both these were repelled in the case of *Sibbald of Keir* against *Sir Alexander Falconer of Glenfarquhar*, 19th February 1679, unless he instructed that he was legally excluded.

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1694. July 17. CHIRURGEON-APOTHECARIES of GLASGOW *against* The MAGISTRATES.

PORTERFIELD, Houston, &c. chirurgion-apothecaries of Glasgow, against the Magistrates thereof, in a suspension on a declarator of exemption and immunity from paying cess, in regard King James VI, in his letter of privileges, exemed them, in 1599, from all watching, warding, stents, and taxations, both for skill, and because they had the inspection of the apothecaries' drugs for the five neighbouring shires, and so it was onerous; and the same was ratified in the Parliament 1672. The Magistrates ANSWERED,—That the public Act of Parliament derogated from all these private exemptions; which might operate *quoad* stents imposed by the Town's own authority, but not as to the King's, imposed by Parliament. And it was remembered that, on the 13th November 1689, *Doctor Irvine* craved the like privilege on his patent as historiographer, and it was refused; though, in 1687, the *King's Tradesmen* claiming, the Lords found it put them *in bona fide* to exeme them for bygones, but not *pro futuro*. There is a difference, also, whether the cess is imposed on them for their houses or for their trade and employment; and their ratification did not express stents, but run in general terms.

The Lords found thir chirurgions could plead no exemption from the present cesses; and therefore repelled their declarator, and decerned.

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1694. July 17. ANDREW CASSY, Slater, *against* JAMES BAIN, Wright.

THE case of Andrew Cassy, slater, against James Bain, wright, was re-

ported ; and, though he was only holden as confessed both on the debt and the promise of payment of annualrent, yet the Lords would not now repon him to his oath, after so long an interval as fourteen years ; and, because he being *lappus bonis*, little regard was to be had to his oath. *Vol. I. Page 633.*

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1694. *July 17.* LADY LAURISTON *against* ALEXANDER ARBUTHNOT of KNOX.

HE had obtained a decret of improbation of a bond taken betwixt the contract and the marriage. They now raise a reduction of that decret, and crave production of Knox's active title. ANSWERED,—You have no interest to call for it, nor am I obliged to produce to you ; your title being declared false and improven. REPLIED,—This were to bar all reductions of decreets of improbation.

The Lords found they could not question his title till first they reduced the certification in the improbation, or got themselves reponed against the same.

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1694. *July 19.* HELEN HOGG *against* The MAGISTRATES of KIRKALDY.

THE debate arose upon the conception of a bond, whereby a father lends out a sum of money, not payable to himself, but to his wife, and, failing of her by decease, to his daughter Lillias Masterton, in fee, with power to the mother to uplift. The point was, If the mother was *fiar*, and the daughter only substitute ; or, if the mother was only *liferenter*, and the daughter *fiar*. For this last opinion there were cited the following decisions :—*Durie, 22d February 1623, Leitch ; 28th July 1626, Tullyallen ; 20th February 1629, Drumkilbo ; and Stair, 23d July 1675, Lamington.* For the daughter it was urged, That the money was hers, and not the mother's ; and that the father's design was, to give it in a provision and tocher to his daughter ; and the last termination of heirs was on the daughter's heirs.

Yet the Lords found the mother was *fiar* in this case, and the daughter only substitute ; and preferred the mother's assignee.

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1694. *July 19.* SUSANNA STEWART *against* JAMES SINCLAIR.

IN the case of Susanna Stewart against James Sinclair, clerk to the loosing of arrestments, for paying her debt of 500 merks, owing by Hay of Park, for loosing the arrestment laid on by her upon his emoluments as one of the five commissioners of the register's office, without caution or consignment, but only upon his own bond ; whereas it being on a decret, it was not looseable : and seeing it was found, by a posterior interlocutor of the Lords, that these daily obventions and casualties were arrestable, and not precisely of the nature of an