

1649. *June 30.* AUCHINNOELL *against* \_\_\_\_\_.

IN the suspension, by Auchinnoell against \_\_\_\_\_, for payment of three or four hundred merks of tocher resting; where the woman was dead, and failyieing of heirs of the marriage, there was a substitution, that so much should come back to her friends, heirs, and executors;—the reason of retention was proponed, and caution offered for the husband his liferent. Whereunto it was answered for the liferenter, That he might have the money more profitably employed, and he should find caution for all that was to return. Whom the Lords preferred, he finding sufficient caution.

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1649. *June 30.* ARCHIBALD MERSER *against* JAMES HAY and WILLIAM STEVINSONE.

IN the suspension by Archibald Merser against James Hay and William Stevinson, the reason of doing diligence for recovery of money from one Averie in Germany, was sustained; because, although his back-bond bore, that he should return that Averie his bond uncanceled or discharged, betwixt and such a day, or else the whole monies, yet the suspender may be thought to have done what lay in him, since, at the commission-directing, the said Averie was bankrupt; so that the charger could have gotten nothing by his bond; and the suspender did such diligence, as he got near 400 ounces of silver plate from the bankrupt his wife. And, 4th July, it was found, That he had done friendly, both in accepting of the commission, and doing for his friend what he would have done for himself; especially, by Averie his letter, produced by the charger, it was declared, that the silver plate was the goods wherefor the bond had been given by Averie.

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1649. *July 3.* GIDEON MURRAY *against* SHAW.

IN the suspension at Gideon Murray his instance against Shaw, the reason, upon a discharge containing a general of all bonds, &c. was not sustained, but for counts and reckonings only, *quod tunc agebatur tantum*; they being both merchants; and the charger having simply written as the suspender had dictated. And the letters were found orderly proceeded; yet giving him a time to relieve him with diligence, as the bond did bear, of that his cautionary, in the testament of the former husband to the suspender his wife; and that he should give caution in the said discharge; because his cautionary in the testament *habebat tractum futuri temporis*.

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