

1649. July 14. MARGARET FYFE and MAGDALINE BALVAIRDE *against* GEORGE ACHINLECKE.

IN the suspension at the instance of Margaret Fyfe and Magdaline Balvaarde against George Achinleck, who had obtained decret for heirship goods out of the moveables belonging to the goodsir; the reason was, That although they compeared and declared anent having the particulars, yet, they being but ignorant women, alleged now, that he could not have any heirship, his goodsir neither being baron, burgess, nor prelate; and, although he had, as being such a person, yet there was more due to themselves, by their contract of marriage, than would exhaust all. Whereupon some fell idly to dispute anent the particulars of heirship, it being ordinary to refer that to the roll in burghs royal. Others would allege, that heirship should be given to any that were retoured, even generally; and would hear advocates dispute thereon, suppose against a fundamental law.

*Page 61.*

---

1649. July 14. SMITH *against* NICOLSONES.

IN the suspension, Smith against Nicolsones, minors, the reason was, That he, being executor, had the benefit of inventory, and could pay no more of the defunct his debts than did exhaust the same; but so it was, that all was exhausted by decreets lawfully obtained. The Lords found, That he behoved to say that payment was already made before the intencion of the chargers their action: for, if payment was not yet made, it behoved him yet to suspend against them all in a multiplepinding, notwithstanding that his informal decret of exhausting the inventory, as he calls it, obtained before the Lords; that the several creditors their reasons of preference may be discussed. So the Lords found the debtors orderly proceeded, but qualified in manner foresaid; and that the executor get suspension through caution.

*Page 62.*

---

1649. November 8 and 9. The CREDITORS of the EARL of MORTOUNE, Supplicants.

THERE was a bill given in by the creditors of the Earl of Mortoune, That, in respect he dwelt in Orkney, where rebellion against the estates was reported to have been moved; likeas, the estates used proclamation against him and others, his complices, for repressing the same; and the said creditors being to cite him, apprehended to do it personally or at his dwelling-house, *quod non daretur tutus accessus*, but craved of the Lords that they might do the same at the cross of Edinburgh and pier and shore of Leith. Which they found could not be done by the laws; yet granted, that, in reforming their supplication, they should seek him to be cited at the head burgh of the next adjacent shire *ubi pateret accessus tutus*, as was ordained in the like cases anent citation