

1649. *December 15.* SIR DAVID MURRAY *against* ALEXANDER TROTTER and PATRICK TWEEDIE.

IN the suspension, Sir David Murray against Mr Alexander Trotter, minister of the new kirk of Twedmoore, and Patrick Tweedie, for temporal lands designed in a glebe ;—the reason, That there were Temple or St John's lands in the parish, was answered, That these were not kirk-lands ; the knights of St John's Hospital at Jerusalem, with their preceptor, being secular men. Whereto it was replied That they were under the vow of chastity, and those lands were excepted in the Act of Annexation, *et exceptio firmit regulam* ; likeas in the Act anent Surrenders, at least, the king's agreement with my Lord Torphichen, they are all surrendered as kirk-lands,—the parish of Torphichen being excepted. But the Lords would hear it in their own presence.

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1649. *December 15.* CLAXTOUNE and WALDOUN *against* WILLIAM ARNOT.

IN the action Claxtoun and Waldoun, Londoners, against William Arnot, executor to umquhile George, his brother, whereby not only threescore pounds sterling [were] obliged to be paid, but also other threescore pounds, in respect the narrative of the foresaid bond carried the same to have been payable by virtue of another bond, which was alleged to have been lost ;—the Lords found it hard, and so ordained them to dispute what they could hereanent, and produce a process intended before the sheriff of Edinburgh against the said George in his lifetime, wherein it was alleged to have been recorded that the said George postponed to give his oath.

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1649. *December 15.* BALMANNO and CHAPMAN *against* LITTLEJOHNE.

IN the suspension, Balmanno and Chapman against Littlejohnne, of a decret at Donald Murray's instance, for heirship-goods belonging to his sister, who died barren, and infert in lands as of fee, suppose before her husband ; the reason was, That there could not be two heirships in one house ; likeas, a wife's testament, deceasing before her husband, bears that the husband's heirship being deduced, the rest of the husband's moveables are estimated to such a sum usually, whereof the wife's executors have third or half, according to the division contained in the testament, and not *ipsa corpora*. And albeit every particular spece were contained therein, it would oftentimes come to the division of a certain body spece betwixt her executor and the husband ; which could not produce heirship. The charger answered, That he opposed his decret, wherein there is no such difficulty, since the wife's heirship that is in question hath been out of the communion of goods with her husband, who had

delivered to the suspender such and such spesces ; whereof the charger craves the best in ilk kind.

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1649. *December 18.* JANET TULLOCH and WILLIAM MITCHALL, her Husband, *against* WALTER WARDROPE.

IN the suspension at the instance of Janet Tulloch and William Mitchall, her husband, against Walter Wardrope, the letters were found orderly proceeded, notwithstanding that the articles of count anent the venting of wine were above £100, and so not probable by witnesses : as also not pursued within three years ; and so prescribed by the Act of Parliament, except it had been proven by writ or oath of party ; because, the decret [was] given, *parte comparente*, and the husband with the wife aye cited and compearing by their procurators, even until the last diet ; where the wife, compearing, deferred a promise of quitting all to the oath of Margaret Wardrope, her mistress, and cedent to the pursuer.

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1649. *December 18.* JANET LOWSONE *against* GILBERT JACKESONE.

IN the action of registration, Janet Lowsone against Gilbert Jackesone, the Lords sustained the action against the said Gilbert, as behaving himself as heir with the heirship goods of umquhile Thomas, contractor, his brother, who had lived thirteen or fourteen years after his father's decease, in the house with his mother : as likewise, sustained the same against the said Gilbert, as intromitter with the said umquhile Thomas his other moveables : notwithstanding, it was alleged, That he meld by tolerance of the mother, liferentrix ; because it was offered to be proven, that he paid the servants' fees, hired them, coft and sold horse and nolt, &c. as *dominus*. It is to be noted, that this Lowsone was relict of a mid-brother, named William, for whom the said umquhile Thomas did contract with this poor woman.

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1649. *December 18.* BALMANNO and CHAPMAN *against* LITTLEJOHN.

IN the action of suspension and reduction, Balmanno and Chapman against Littlejohnne, who had charged upon a decret for heirship of a woman named Murray, obtained before the bailies of Perth more than twenty years since, the reason [was,] That she could not have an heirship, deceasing before her husband, *propter communionem bonorum inter virum et uxorem* : and that the constant practice of all the consistories of the kingdom was to confirm the whole moveables belonging to man and wife, the heirship belonging to the man being deduced : so that the division was made, whether the wife's executors got third or half,