

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

*Page 97.*

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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.

*Page 98.*

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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.

*Page 99.*

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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,

without mention of any heirship to her heir; and the interest of heir and executor was to be disputed among them, *si ipsa corpora*, and not the estimation of these speces, as use is, for the most part,—was confirmed. And it is to be noted, that, if the heretrix had outlived her husband, without question her heir might have had an heirship; and farther, if she had had any goods, which the lawyers call *bona receptitia*;—*Ulp. tit. 6, de Dotibus lib. singulari; et apud Gell. lib. 17, cap. 6*;—which are those, that a wife having had one husband or more, might have cepted and retained to herself, by her contract of marriage with her subsequent husband. Even that wife, deceasing before her husband, might have an heirship out of those goods; *quia non erat ibi communio bonorum*.

There was here alleged a practique, *The Laird of Traquaire against Home*, for the heirship of Home's wife, called *Rutherford*, being the Laird's near cousin, in the year 1562, cited out of Balfoure's Practiques, Maitland's, and the Lord Culrosse's: Which the Lords did not respect; for the inviolable practique and custom of the consistories, past memory of man, *in viridi observantia*; and in respect of the confusion that might ensue thereon; and in respect of the late acts anent heritable bonds in favours of the rest of the bairns and nearest of kin by the heir.

Page 99.

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1649. December 18. The LADY TULLIALLAN *against* CRAWFURD.

THE Lady Tulliallan was ordained to be answered and obeyed of the sum contained in a bond granted to her behoof by the comprisers of her husband's estate, whose comprisings were expired far above the avail of the lands long before that transaction, which was for her infetment of liferent and kindness; and that against one Crawford, creditor also to her husband for 3000 merks, and the annualrents thereof, promitted in tocher with his sister to the said Crawford.

Page 101.

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1649. December 19. SIR WILLIAM SCOT OF CLERKINGTOUNE, one of the Senators of the College of Justice, *against* GILBERT KIRKWOOD'S HEIR, &c.

IN the action for proving of the tenor, by Sir William Scot of Clerkingtoun, one of the Senators of the College of Justice, of a charter granted to umquhile Gilbert Kirkwood, and of a renunciation by one M'Ronald, anent the lands of \_\_\_\_\_; all parties having interest being called, suppose none compeared in the contrary; the foresaid charter was produced lacerat; and, as it seemed, consumed by w——, yet battered together, having so much of the substantiality thereof as might show the verity of the matter: *item*, An extract of the foresaid renunciation out of Mr Francis Hays register, to make up the truth of the principal; and receive certain famous witnesses for farther probation. Whereupon the Lords found the said summons and action relevant.—*See the next Case*.

Page 101.