

1650. *January 15.* JOHN FORBES of LESLIE *against* WILLIAM LAW.

IN the suspension, John Forbes of Leslie against William Law, cedent to the Laird of Innes,—the reason, That the said Laird of Innes gave bond to the said John Forbes of Leslie, that he should move the Master of Forbes to subscribe a disposition of lands made by Innes to him, betwixt and a certain day contained therein, under the pain of 5000 merks; which he opposed by way of compensation;—the which reason, albeit it was replied to be not liquid, and, as it were, a failie undeclared, nevertheless the Lords found relevant, in so far as to urge the charger to say and allege the condition fulfilled.

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1650. *January 16.* MARGARET SWINTOUNE *against* The LAIRD of CRAIGMILLAR.

MARGARET Swintoune,—as executrix to James Nisbet, her husband, who had, from umquhile Robert Prestoune of Craigmillar, a tack of Little France, set to Mr Gawine Nisbet and the said James during their lifetimes,—doth pursue this Laird of Craigmillar, as heir to his father, David Prestoune, who was heir-male to the said Robert, setter of the tack; for payment of the duties of Little France, from 1636 to 1644 inclusive. It was excepted, That it behoved her to pursue the executor and the heir of line of umquhile Robert Prestoune, by way of discussion, before they could come to the heir-male or of tailyie, according to the practick; likeas the pursuer, knowing that custom, had obtained decret against the heir of line, but had used no execution thereon. Which the Lords repelled, since the warrandice of the tack foresaid was most proper to come against the heir-male, who had succeeded in the whole estate; likeas he had uplifted some of thir years' duty himself, or his father. As also, I think that our practick herein ought to be helped in favours of creditors; so that, seeing they all represent, the defunct's creditors ought to have liberty to pursue the executor, heir of line, male, tailyie, or provision, and especially him who has the greatest benefit by the defunct's decease;—let the payer, who is distressed, seek his relief of whom he pleases, according to the order. And as to that allegiance,—bearing, That the said umquhile James Nisbet should have pursued Mr Gawine's relict for possession, conform to his tack; and that she could not have debarred him; since Mr Gawine getting tack from the Laird of Craigmillar for his service, and putting his wife's name therein,—it was *donatio inter virum et uxorem*; which was revoked *tacite*, the said Mr Gawine having taken a posterior tack to himself and the said James; and the said James had prejudged himself in not urging the said relict to be removed: the Lords found it more subtile than of any force.

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1650. *January 16.* The LAIRD of WARISTOUNE *against* ROBERT KINCADE.

THE Laird of Waristoune, as heir generally returned to his father, having dis-

position from umquhile John Kincade, in Gogar, who had infest his father,—urged, upon the disposition, Robert Kincade lawfully charged to enter heir to his father, to enter himself to the superiority, that he, being retoured specially, might hold of him; as also, craves it to be declared against the Laird of Hal-toune, that he ought to hold of him, superior to the said Robert, who was to lose the superiority, if he did not enter. And this is the order in such a case, when the immediate superior is not entered himself; since the special retour should bear of whom holden, that the precepts of the Chancellery may proceed thereon.

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1650. January 16. MAKCALA against SCOT.

IN the pursuit, Makcala against Scot, the reason of suspension proponed by Scot, That she was clad with a husband when she gave the bond,—was repelled as irrelevant; because it was offered to be proven that her husband was separated from her, and she had pursued sundry actions without his concurrence, wherein she had prevailed. And this maxim of law,—That a woman clad with a husband cannot be bound,—obtains only where her husband may suffer prejudice if she should contract debt; or, if she herself should be prejudged by subscribing of bonds with her husband, *reverentia maritali*.

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1650. January 16. The EARL of PANMURE against SIR DAVID CUNINGHAME.

THE Earl of Panmure, pursuing Sir David Cuninghame, dwelling in England;—it was urged by the defender, That it might be expressed in the decret, that the same should have only execution against the defender's goods in Scotland. Which the Lords found not necessary to be adjected, since the decret obtained in Scotland could have no execution *extra territorium*; but that could not hinder the said Earl to seek his own, by virtue of the bond foresaid, either through real or personal execution, as the Judge there should find meet, after the production of the bond.

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1650. January 16. The COLHEUGHERS of CARNETYNE against CHARLES POLLOCKE.

IN the suspension at the instance of the Colheughers of Carnetyne against Charles Pollocke, who had charged them, upon a decret before the Lords, by the which they were ordained to return to their work, reserving *hinc inde*, for damage and interest;—the reason, That they, being poor men, and many in family, were necessitated, as destitute of work and wages, to provide for them-