

their father. 2. George and his sisters are all conjoined in one sentence of substitution, without any other distinction except that of male and female.

The Lords found, that Robert and Samuel Muirheads, two of the substitutes in the bond, having died before James Muirhead, the father, who was fiar; the sums contained in the said bond fell to George Muirhead, the surviving son, and his three sisters equally and proportionally; and that the pursuer, one of these sisters, had right to an equal fourth part thereof.

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1709. *January 26.*

[ANENT the ADVOCATES for the POOR.]

The Lords ordained the advocates for the poor to be named yearly, in November, for the subsequent year; and those named to continue till others be put in their place: and any advocate who begins with a poor cause, to continue therein *usque ad sententiam*, or till it be brought to a conclusion.

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1709. *Feb. 11.* The GOVERNOR and COURT OF DIRECTORS of the BANK OF SCOTLAND, *against* the COMMISSIONERS of the EQUIVALENT.

THE Directors of the Bank having, at the desire of the Privy Council, undertaken the re-coinage of all the current coin of Scotland, upon the conditions specified in an act of Privy Council; they received in the old species from all inbringers, for which they paid current coin; and gave in the said old species to the mint. As this was melted down and essayed in presence of the three Commissioners and Essaymaster, appointed for that end, the Bank was to receive a certificate for the loss in recoinage, upon the Commissioners of Equivalent, to be paid on demand, and the Master of the Mint's bond for the rest, payable in weight and tale, in the terms of the Act of Parliament, 1686. There happened in the coining sometimes an excesse on the tale of five or six shillings, or thereby, in one hundred pounds, over and above the sum contained in the Master of the Mint's bond; through its not being possible to keep every piece of money to its due proportion of weight.

The Commissioners of the equivalent being charged by the bank to make payment to them of L527 7s. 10d. Sterling, as the difference upon the recoinage of the Scots and foreign money, with one half per cent. making in all L539 9s. 2d. contained in a certificate under the hands of the commissioners appointed by the Privy Council, for receiving in the old money: the Commissioners of the Equivalent suspended upon this reason, That the bank was debtor to them in a sum exceeding the charge, by the excesse of the specie after recoinage.

Answered for the DIRECTORS OF THE BANK,—The suspenders have no right to this excescence; nor cannot, upon account thereof, pretend retention or com-

pensation : because, had private persons embraced the privilege reserved to them in the Bank's agreement, and carried their own money to the mint, and waited the course of recoinage ; they must have got their certificates of loss instantly satisfied by the Commissioners of the Equivalent, without being questioned about the ex-crecence, or liable afterwards to quit it ; and the Bank, by undertaking the re-coinage, came in place of the private persons, who got their old money exchanged at the Bank.

The Lords found, That the benefit by the augmentation of the tale, is to accrue to the Bank, as well as to any other private proprietors of bullion ; and is not imputable *pro tanto* in payment of what is allowed in satisfaction of the loss sustained by the giving in, and giving out of the money.

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1709. *Feb. 24.* HARY DOW, writer in Edinburgh, *against* Mr. DAVID SEATON of Northbank.

HARY DOW, as curator to Cassie of Kirkhouse, having obtained a decret of count and reckoning, against Mr. David Seaton, late co-curator and factor ; as a person suspected, and debtor to the minor in a great balance : Mr. David procured a suspension of the decret, upon consigning a disposition of all his means and estate, for security of the foresaid balance ; during the dependence of which suspension he was discharged to meddle in the minor's affairs. After the Ordinary in the suspension had constituted the charge against the suspender, which was very considerable, and before his articles of discharge could be particularly discussed ; Hary Dow having represented to the Lords by bill, that Mr. Seaton's affairs were turned altogether in disorder ; that himself had absconded, and his creditors were going on with diligence against his estate :—

The Lords appointed the consigned disposition to be registered, and given up to Hary Dow, to take infeftment thereon, for securing to the minor what balance Mr. David Seaton should be found debtor in at the event of the count and reckoning. Albeit it was alleged for the suspender, that infeftment could not be taken for a debt not yet constituted.

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1709. *Nov. 9.* THOMAS SANDILANDS, Collector of the Fines imposed by the Justices of Peace in the District of Mid-Calder, *against* JOHN PURDIE of Hartburnhead.

JOHN PURDIE, fined by the said Justices of Peace in one hundred pound Scots, for fornication with Christian Howison, his servant, conform to the Act 38, Parliament 1661 ; he being the eldest son of an heritor, and so a gentleman in the construction of law : when charged for payment by Thomas Sandilands, collector of these fines, he suspended upon this ground, that the fine was exorbitant ; in so