

sister, against Mr Roger Mowat, and some others, her executors, the defenders would have given him an assignation to a decret against the town of Edinburgh, who had meddled with a great sum of money belonging to the defunct the time of her decease. But the Lords found, That the executors behoved to discuss the defunct her debtor, who had suspended.

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1649. June 28. CHRISTOPHER SPENCE *against* ALEXANDER SKIRVING.

IN the suspension at the instance of Christopher Spence, or reduction of a decree given against his wife and himself *pro interesse*, in favours of Alexander Skirving, spouse to umquhile Helen Sinclar, sister to the said Christopher his wife,—he craved suspension or reduction upon this reason, amongst others, that he was only decerned *pro interesse*, which had now ceased, she being dead. The Lords would have it heard in their presence; saving, that the party offered to prove, that he had intromitted himself, *et sic in rem versam*: for the umquhile Earl of Haddingtoun purchased himself free of all decreets obtained against his lady and himself *pro interesse*; because, from their marriage, he never meddled with any thing belonging to her, but she had *liberam administrandi res suas facultatem*.

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1649. June 28. DAVID GRAY *against* JEAN OGILVIE.

IN the suspension at David Gray his instance against Jean Ogilvie, upon a bond of a liquid sum, without condition expressed therein; the Lords,—in respect of a reason dipping upon David Gray his back bond, to umquhile Captain Gray, her spouse, who had deponed the money in David his hand,—thought good to try if the charger could have any more nor a third of that sum, and that the two part might be employed to the use of the children, seeing she was to marry another husband; they being *communis patriæ parentes*. And here it was also alleged, That there was some arrestment used by a creditor of the father. Likeas, the 4th of July, they ordained caution to be found to the minors, and would not receive her oath hereanent

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1649. June 28. JOHN MUIREHEAD *against* JOHN POLCKE.

IN the action of maills and duties pursued by John Murehead against John Polcke, his tenant, who suspends, That he could not pay, because his master plundered him, accompanied with a number of soldiers, about the time of the wicked engagement, and left him nothing; whereupon he had spuilyie depending; and is the more odious, that he offers him to prove, that it was done upon a

fasting Sunday. Whereunto the master answered, That he was also sore spuilied himself that day for not putting out of a footman; it being the tenant's fault, who should have put him out. The Lords assigned a short term to the suspender to prove that which was *in fact*, and to liquidate the prices; or, if he had rather, more terms to prove his spuilie. The Lords found the letters orderly proceeded for the master.

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1649. June 28. GILBERT HARDIE *against* HAMILTOUNE and POOLLE.

IN the advocation at Gilbert Hardie his instance, of an action of removing at the instance of Hamiltoune and Poolle against him before the town of Edinburgh,—there was a reason of suspected partiality, one of the bailies threatening Hardie, that he should be decerned to remove, and the assessor being the drawer up of the pursuer his allegiance and replies; and, farther, the matter dipping upon the discussing of double tacks, specially where the user of the advocation craved only to set while Martinmas or less, that he might get his wine and beer sold, otherwise he would be altogether ruined. Some inclined to try upon what conditions the tack pretended by Hardie was consigned in Jacob Nicolsone his hand, and so would have had it advocated. But others prevailed, that it should be remitted, because that might delay time, which was precious; for the great confluence of people now before Lammas, and advocations, in Removings, are important in the town of Edinburgh: yet recommended to the town to be gentle and tender herein towards their burghess, Hardie, whose credit hinges upon his change.

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1649. June 28. WIDOW WALLACE *against* —————.

IN the action for a terce, at the instance of Widow Wallace, furth of her husband his land of the Cannongate,—it was excepted, That all burgh lands ought to be free, and ought to have the like freedom. It was replied, That, by the old laws, the word burgh is only to be understood of burghs royal; who have that privilege, as it would seem, because they were almost merchants and tradesmen who dwelt therein, and did leave their dwelling-house to their heir; as the chief messuage in landward is likewise thought to be *præcipuum*: and that, out of the moveables, the relict might have a competent third. It was duplied, That the burghs of regality and of barony are of a like nature, the inhabitants having collected themselves to dwell together for mutual defence. And what is *privilegiatum* to the burghs royal, as, to vote in Parliament, to sell wine and wax, &c. those particular exceptions, by the Acts of Parliament, *firmiter regulam in omnibus casibus non exceptis*; and so they take infettment by hasp and staple, in the regals as in the royals. Likeas the custom has never been of seeking such a terce, albeit Anna Hay got it in the Cannongate,—the Raes, her good-sisters, not willing to oppose her for their own reasons; *quod unicum*