

defunct, whose executor pursues for the same. So the Lords remitted the process, reserving the modification to themselves; because the mandate was in writ by his letter; and sustained the same, *4th July* also.

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1649. *July 3.* The EXECUTORS of COMBRIE *against* THOMAS RENNIE.

IN the action pursued by the executors of Combrie against Thomas Rennie, the exception upon a discharge, given within a few days after the date of his bond, suppose before the day of payment, *pecunia jam representata*, suppose not the whole; was found relevant, albeit the said discharge did not say *in satisfaction of the said bond*: except the pursuer would reply that the defender was *debitor aliunde: et debitori licet solutum imputare in duriolem sortem*; as rather to pay a bond bearing annualrent than one without the same or account; but here payment was advanced before the day. The Lords would have had the discharge produced; but the man that had it was said to be out of the country; and so a day was assigned, reserving all *contra producenda*.

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1649. *July 3.* WARDLAW *against* SIR THOMAS KER.

IN the process by Wardlaw against Sir Thomas Ker, the decret against Sir Thomas Ker was found wrongously given out, and disconform to the summons; for, there being a process depending at the instance of umquhile Mr John Wardlaw, father to the pursuer, wherein the said Sir Thomas had an incident running, the said Andrew, being made assignee, did intent a transferring of that process; and yet the clerk gave out a transferring of the contract of marriage, cutting the said Sir Thomas short of his diligences, who was but oy of the cautioners.

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1649. *July 3.* JOHN BOYD *against* PETER and HAMILTOUNE.

IN Peter and Hamiltoune's bond to John Boyd, the words "conjunctly and severally," omitted in the obligation, neither of them being cautioner, were thought *correi debendi et debitores in solidum alteruter*; because, in the end of the bond, there was a clause to relieve ilk one other *pro rata*.

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