

their own presence, in favours of the good-daughter and her contract of her marriage ; and they thought that the confirmation might be drawn back. But, what benefit can it work but only for the superiority ? seeing the said umquhile James, being nearest kinsman to the defunct, that was proprietor of the lands, might retour himself heir, and dispone that supervenient right to any man, without doing prejudice to them who had right to the superiority.

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1650. *January 2.* LOCKARD *against* JAMES BROWNE.

IN the action of reduction at Lockard his instance, *super capite inhibitionis*, for one poor 100 merks, against James Browne, cordiner, for reducing of his infestment, flowing by progress from umquhile Edward Johnstoune ; against whom decret was obtained, *jure mariti*, and against his wife, the debtor principal ; the same decret having been suspended by the said Edward and his wife, and the letters found orderly proceeded ;—the Lords would hear it *in præsentia*, as if it were coincident with that of Scot of Hartwoodmyres, and did concern all husbands called for their interest in any process : suppose it doth not, as I think ; because, in this case, *res transiit in rem judicatam*, not only in the first decret, but also in the decret upon the suspension, where the said umquhile Edward was principal suspender.

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1650. *January 3.* GRAHAME *against* The EARL of ANNANDALE.

IN the action of exhibition at Grahame's instance against the Earl of Annandale, the exception was sustained, That there could be no charter-chest of the writs of the lands of Bl—wood, comprised from them, exhibited by the defender, seeing the reversion of the comprising was long ago expired ; but, as for any other writs that did concern them, the said Earl was ready to exhibit them upon oath.

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1650. *January 3.* ADAM GALT *against* JEAN NICOLL.

IN the suspension Adam Galt against Jean Nicoll, who had given 500 merks upon the wadset of his lands, with a back-bond for payment of 40 merks yearly,—the reason was repelled as irrelevant, bearing, That the suspender had a back-tack set to him for terms to run, the time of the warning, whereupon the decret of removing now craved to be suspended was obtained by the charger ;—who then replied, That the said back-tack contained an irritant clause, that, *viz.* if three terms ran in the fourth unpaid, the said back-tack should expire without any declarator ; and if it did bide any, the same should be done before the bailies

of Aire; so that, the same having been discussed before the said bailies, it needed no farther declarator. *Page 129.*

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1650. *January 3.* The LAIRD of EDMISTOUNE *against* ADAM MUSCHETT.

IN the suspension at the Laird of Edmistoune his instance against Adam Muschett, assignee constituted by Katherine Haggie, the reason was not found relevant, upon that, She had made umquhile Mr David Williamsone her assignee, and that he had obtained decreet against him, for some years bygone, of that annualrent payable to her during her lifetime; because the said Mr David his assignation was only for 700 or 800 merks, which might have been paid, and so his right was expired; likeas the suspender, since syne, hath paid to herself sundry years, upon sufficient warrandice; which she and her assignee yet offer.

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1650. *January 3.* MR ALEXANDER LISKE *against* PATONE.

IN the suspension of double pointing, Mr Alexander Liske and Patone, the said Liske alleged an infeftment in the year 1603, given by his father, reserving his own liferent; and Patone, being a creditor, alleged an infeftment given by the father in the year 1626, together with a ticket, dispensing with the said infeftment given by the superior, that the same should infer no recognition; but without his confirmation. (Where it is to be inquired, if the same infeftment was given to be holden of the superior, which would be public, if confirmed; but if it be base, it remains base, notwithstanding the superior's confirmation.) Then Liske alleges, That his father's possession being his while he lived, he, after his decease, obtains decreet of removing, which is civil possession: likeas, thereafter, he obtains also natural possession, by setting a tack to the tenant. Again, Patone alleged possession, by payment of the annualrent, and that Liske, as factor for his father, did pay him the same; and farther, that, in the year 1646, there being a double pointing raised by the tenants, Patone was ordained to be answered and obeyed. Whereunto Liske answered, That he did not compear in that decreet to produce his right: the which he produces now, and oppones the same together with his possession; likeas the said Patone has infeftment of other lands, which are able to pay him his annualrent.

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1650. *January 4.* FORBES of BALNAGASKE *against* FOULLERTOUNE of KINNABER.

[*See page 449.*]

IN Kinnaber and Aslowne their process, it was farther alleged, That although *debitor non præsumitur donare*, yet *debitor potest donare*: likeas it is offered to be proven, that the disposition whereupon the infeftment renounced did proceed, was