

1650. *January 8.* PATONE *against* LISKE.

[*See page 452.*]

IN the foresaid action betwixt Patone and Liske, where they were ordained to condescend on their possession,—the possession alleged by Liske immediately after his father's decease, by obtaining decret against the tenants, and setting of tacks to them by the space of six or seven years, was not respected: because Patone offered him to prove, that the father paid him his annualrent, of the knowledge of the said Mr Alexander his son, who knew of the infestment, and was *in mala fide* not to have called him to the obtaining of these decreets; especially seeing the said Mr Alexander his infestment is null by the 105th Act of King James V his Parliament, in the year 1540, whereby it is expressly ordained, That, whosoever puts their bairns, friends, or other persons, in private state of their lands, and thereafter disposes their lands to another, *ex titulo oneroso*, who gets peaceable possession year and day,—the foresaid person, privately seased, cannot be heard to oppose the true creditor foresaid; which is in this case.

Page 141.

1650. *January 8.* The LAIRD OF GENKINDIE *against* FRANCIS HAY.

IN the action pursued by the Laird Genkindie against Francis Hay, for the duty of some lands alleged set by him to the said Francis, it was excepted, That there was no tack produced to instruct his interest: Who replied, That the tack was in the defender's hand, and was a mutual evident, suppose there was not a double thereof; likeas the duties might be craved of him, as he who entered in possession, and set part of the lands to some sub-tenants: as also, that the tack itself was procured by some of the defender's friends of the name of Hay, inserted witnesses therein, whereof one is dead and another yet on life; likeas the same tack was produced before the committee at Aberdeen, to make him free of the proclamation whereby Haddoe's tenants were ordained to return to their own possessions; and the defender, after that, taking more lands from Haddoe's friends, took them obliged to free him of the foresaid tack. Yet the Lords would not give answer; because it seemed to be a making up of a new tack, which ought to have been by a summons for proving of the tenour: but, before any answer making, they thought good to examine, *ex officio*, the witness inserted who lives, together with the Laird of Eacht and Mr James Baird.

Page 142.

1650. *January 8.* JOHN WALDO *against* WILLIAM ARNOTE.

IN the action, John Waldo against William Arnote, wherein Waldo suits the executor of George Arnote for payment, not only of sixty score pounds sterling, contained in a bond obliging to pay, but also of other sixty, related in the nar-

M m m

orative thereof, as aughting by another bond, which should have been paid before this, which was alleged to have been lost or miscarried coming from London by packet to Robert Ingles, and therefore action had been intented before the sheriff of Edinburgh *in anno* 1645; referring the same to the said George his oath: which he essonyied to give, upon that, That the procuratory was but general, and he had no special power to refer it to oath, if perchance the foresaid bond might come again into the hands of Waldo. The Lords thought fit, before answer, to try Robert Ingles, the executor himself, Mr John Gilmour, procurator for the said George, and also George Arnot, Waldo, and his copartner, their books of accounts.

Page 143.

1650. *January* 8. FRASER *against* GRANT OF BALLANDALLOCH.

IN the action of suspension, Fraser, minister, *against* Grant of Ballandalloch, the bond charged upon,—being for bygone maintenance, suppose he alleged, Extorted through fear of plundering,—was found to be *debitum fundi*.

Page 144.

1650. *January* 9. DR KINCADE *against* _____.

IN the action between umquhile Dr Kincade his heir of line, for his heirship goods, and the Laird of Coekburne, his executor, anent the best book amongst his books; question being made, the Lords found, That the whole works of an author named Aldromaldus, contained in sundry volumes, behoved to be esteemed the best book; as if *corpus juris* were sought, or the great Bible in sundry volumes, containing all languages, or the works of Suarez, or sicklike.

Page 144.

1650. *January* 9. KNOLLES *against* The LAIRD OF SMETOUNE.

IN the exhibition pursued by Knolles against the Laird of Smetoune,—notwithstanding the writs exhibited according to the inventory subscribed by their predecessors, to whom they were charged to enter heir, and the contract of marriage craved to be registrate against them; notwithstanding the laird's oath given, the Lords found, That the lady behoved to give hers also, and to give a commission for that effect.

Page 145.

1650. *January* 9. SMETOUNE RICHIESONE *against* ROBERT.

IN the suspension by Smetoune Richiesone against Robert, some time his tu-