

proponed,—the Lords repelled the same, reserving action of improbation, as accords of the law. Which seems to have been proponed for preferring of some other creditor, such an exception not being usual; or because the husband, called for his interest, desired to prolong the process, that, if his wife should die *medio tempore*, he should not be constituted debtor.

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1650. *January 12.* MR ANDREW DICKE *against* HIS BROTHER'S RELICT.

IN the action between Mr Andrew Dicke, executor confirmed to his brother Lewis, [and] his said brother's relict; [she] craved her half of the moveables; and that he would instruct, by the writs in his hand, upon oath, with certification, and make payment conform; she finding caution to make forthcoming the whole, for payment of her proportionable part of any debts emergent, whereunto he could be liable as executor; in respect he could not instruct what was aughting by his brother, but the creditors behoved to do it at their pleasure; which caution was used to be found by legators, and is called, in the civil law, *cautio Muciana*.

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1650. *January 15.* JOHN ————— *against* —————.

IN the removing at John ————— his instance, of certain lands in the Water of Leith,—the exception, That they were tenants to the relict, now, of umquhile David Bell, who was obliged, by contract of marriage, to infest her in these lands, and granted a procuratory of resignation for that effect,—was repelled, being proponed against a compriser, *quia ubi nulla sasina ibi nulla terra*; but might be sustained against the contractor's heir; in which case it is thought that a simple contract of marriage should be good enough for a woman's conjunct-fee, without a seasine. There was here an allegeance proponed also, upon a decret of improbation at B———— of the Cottes' instance against Bell, where it was interlined, and some name blotted, which the Lords thought good to be conferred with the register and warrants of process.

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1650. *January 15.* QUINTENE KENNEDIE *against* JAMES BROWNE.

QUINTENE Kennedie alleging to have been sollicitated to come from Aberdeen over the water to Edinburgh, by James Browne, the time of the sickness, for making William Porter's testament; and having made the same, and moved the testator not only to make him his executor, failyieing his own daughter, but also, in case she survived, to leave him 10,000 merks of legacy: after sundry meetings with the said James, and refusals to deliver the testament, except he would give him the tenth part of his legacy procured by his moyen, at the least more