

than ten pieces, which he had offered to him; he, having delivered the testament, and gotten fifteen dollars in part of payment, as he alleges,—pursues the said James for the ten pieces, upon his promise before the commissaries, and refers to his oath; who depones with a quality, as is alleged; and is assoilyied. The said Quintene intents reduction, before the Lords of Session, within the year; as use is, and ought to be, of commissaries' decreets. Yet the Lords assoilyied the said James, and ordained £40 of expenses against the pursuer, being a member of the house. And the Earl of Cassells, being an extraordinary Lord of the Session for the time, would have had him refunding the fifteen dollars that he got, with fifteen farther.

*Page 162.*

---

1650. *January 15.* SURREARIERS and DOWNAM *against* MARY GARDINES.

MARY Gardines, as executrix to her husband, Thomas Binning, being pursued by Surrariers and Downam, merchants of Amsterdam, for the price of certain wares coft by him, according to his ticket; did except against the ticket, That it did not design the writer's name, nor was subscribed before witnesses, according to our law. But the Lords repelled the same, in respect of a former practick, wherein the custom of that country was proven to be, betwixt merchant and merchant, without such solemnities. Yea, I could think, that she who was confirmed executrix-creditrix to her husband for implement of her contract of marriage, should not be preferred to strangers, who know not such customs as ours are; *dum sequuntur fidem popularium nostrorum.*

*Page 163.*

---

1650. *January 15.* JOHN ACHESONE *against* PETER ADAMSONE.

THE exhibition, at John Achesone's instance against Peter Adamsone, was sustained to be proven by witnesses, what they would not exhibit of their own accord, reserving against the deliverer: which is otherwise in any writ deponed in a third man's hand, wherein the depositary's oath is only receivable.

*Page 164.*

---

1650. *January 15.* SPENCE *against* MILLAR.

IN the action, Spence against Millar, pursued by Spence, relict of Archibald Wauchope, as executrix dative surrogated *ad omissa et mala appretiata*, as her umquhile husband was, for the goods left out or undervalued in umquhile John Wauchope's testament by umquhile Margaret Liddell, his executrix and spouse, who was married after to William Millar, and which William Millar is confirmed executor to her: decret was given against him, *pro interesse*; who has suspended upon that reason, That the said umquhile Margaret her inventory of testament

is exhausted. Whereunto it is replied, That the suspender, Millar, was *locupletior factus*, in respect that he got all her goods and gear which she had by her first husband, John Wauchope. To the which it is answered, That she could have but a third of his means, and the same very little, seeing that same testament is exhausted with the debts; so she could not make her second husband *locupletior*; likeas her testament also is far exhausted. It is here to be adverted, That the foresaid reply of *locupletior* ought not to have been proponed, as I think, in respect the charger's title ran upon another ground; that was, a surrogation of executry *ad omissa et male appretiata*. But it seems they have not followed out the probation of that their interest; but, pursuing Millar, as executor to Margaret Liddell, who was executrix to John Wauchope, they allege him to have been tutor to this Wauchope's brethren and sisters, and would make him countable for their gear, where Millar propones them to have been entertained by him.

Page 164.

---

1650. *January 15.* JOHN DOUE *against* EDWARD DRUMMOND.

IN the suspension at John Doue of Arin his instance against Mr Edward Drummond, some time minister of Calendar, at Monteith, charger, for six bolls victual, contained in the decret of the plat 1618, for crop 1639, &c.;—the reason is, that, notwithstanding the said decret, his predecessor gave more than three bolls; and respect cannot be had to that decret, where the Bishop of Dumblane, being one of his kirks, provided the minister serving that cure to twenty-four bolls, payable for the teind of that town, whereof thir lands are a fourth part, where nought was due but twelve bolls, in doubling that which was due upon the heritors, who were not called, that he might provide the minister with less deduction and prejudice to his own rent. Which the Lords did sustain; yet warned him to go before the committee of the teinds.

Page 166.

---

1650. *January 15.* LORD CARDROS *against* WILLIAM GRAHAME OF GARTMORE.

IN the action, my Lord Cardros against William Grahame of Gartmore,—the Lords thought it not reasonable to sustain process for rental bolls, notwithstanding decreets gotten against the tenants, except it could be instructed by small rentals; since the said Grahame offered him to prove a tack, set for sundry liferents, before any interruption by inhibition; which could only infer spuilie or wrongous intromission; but no interest to seek rental-bolls, which they were never in use to pay.

Page 167.