

1679. *Feb. 25.*—MARGARET JOHNSTON, relict of Sir John Weymes of Bogie, upon a bill craving a yearly aliment from her husband's creditors, got modified to her by the Lords 600 merks for her expenses, mourning clothes, and trouble, in burying of her husband, albeit the Lords (17th January last) then modified 500 merks for defraying his funeral expense; and this albeit the creditors were all legally secured, conform to the laws of the kingdom, long before her contract of marriage, which she then knew; and so was *in mala fide et in lucro captando*, and they *in damno vitando*, and many of them very poor, and who by his being bankrupt would lose part of their sums. *Vol. I. Page 44.*

1680. *June 29.*—IN the Lady Bogie's case against her unquhile husband's creditors, (*Vide 25th Feb. 1679*) besides what they modified before for his burial, (which, he dying bankrupt, ought not to have been sumptuous,) they now ordained her upon oath to depone upon the truth of some further articles of debursements given out by her, that they might modify a farther gratification to her; seeing, if the creditors would be inhumane and cruel, yet the Lords might modify a sum for his funeral charges to come off his creditors. But this was thought a stretch of law, and that they had modified enough already for the burial of one who died in the tolbooth of Edinburgh.

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1680. *June 30.* The TOWN of EDINBURGH *against* JAMES SCOT, SHERIFF-CLERK of LOTHIAN.

IN a suspension, the Town of Edinburgh against Mr James Scot, sheriff-clerk of Lothian, collector of the taxation imposed by the convention of the States in July 1679, for the hospital lands; the Lords found that, by an express clause of the said Act of convention, such lands as they could instruct were allocated and mortified to the use of their hospitals before 1656 were free of this cess; but the hospital's naked possession of them, though never so long, was not enough to give them the privilege and exemption: and find, though by mistake they paid for their lands, it lays no obligation on them so to continue, it being *indebité solutum*.

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1680. *July 1.* RANKIN *against* ARNOT.

IT WAS ALLEGED a renunciation of an infeftment of annualrent was null, because it was not registrate within sixty days, conform to Act of Parliament in 1617. REPLIED,—That Act speaks only of registration of wadsets, and infeftments of lands and property thereof; but not of infeftments of annualrent; which is only a servitude affecting the ground, and so cannot be extended.

The Lords ordained it to be heard in their own presence; but some thought it did not deserve it, seeing the reason and equity of the statute, for securing the lieges, seems to be alike in both; only, statutes are *stricti juris*.

In the same cause, on the 8th July 1680, the Lords found a poiding unwarrantable, because it was upon an heritable bond, and not first loosed by requisition.

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