

lenge it for the blank filling, as accords of the law, in respect that it condescends not on the writer and filler up, which is a nullity by the Act of Parliament. The which the Lords admitted.

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1649. *June 27.* The LAIRD of BRUNTOUNE'S OY *against* The LAIRD.

IN the action for aliment at the oy his instance against Laird of Bruntoune, —it was excepted, That, although the oy was apparent heir to his father, who had died in fee, yet the Act of Parliament is only against wardatours, and drawn, by interpretation, against lady liferenters; and not where the goodsire, by contract of marriage, hath given a fee of all his lands to his son, with reservation of his liferent of so much; which could not be diminished by the son, although he had a numerous family, let be by the oy, whom he is not obliged to entertain. The pursuer alleged, That the goodsire got a great tocher, and the lady liferenter's mein portion was as it were bought. The Lords would hear it *in præsentia*.

This would be helped, either by an Act of Parliament, or a clause in the matrimonial contract, that women entertain the children till they may do for themselves.

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1649. *June 27 and 28.* ————— *against* WIDOW FYFE.

IN the process for heirship, the widow Fyfe had gotten two several commissions before, for giving her oath at Dundie, but, being defender, had neglected the same. Therefore, the Lords would give no farther commission; but ordained her to come and depone here specially, seeing there was no testimonial of infirmity.

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1649. *June 28.* GUTHERIE *against* The LAIRD of FENTRIE.

IN the exhibition pursued by Gutherie against the Laird of Fentrie, of a bond consigned in his hand, Major Scrimgeour, to whom it was made, called for his interest, excepts, that the bond was delivered to him and registrate, and so could not be exhibited. Yet the Lords would take then the Laird of Fentrie his oath anent the alleged condition whereupon the bond was put in his hand, he being *depositarius*.

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1649. *June 28.* HENRY LYLE *against* ROGER MOWAT, &c.

IN the action at the instance of Henry Lyle, for a legacy left to him by his
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sister, against Mr Roger Mowat, and some others, her executors, the defenders would have given him an assignation to a decret against the town of Edinburgh, who had meddled with a great sum of money belonging to the defunct the time of her decease. But the Lords found, That the executors behoved to discuss the defunct her debtor, who had suspended.

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1649. June 28. CHRISTOPHER SPENCE *against* ALEXANDER SKIRVING.

IN the suspension at the instance of Christopher Spence, or reduction of a decree given against his wife and himself *pro interesse*, in favours of Alexander Skirving, spouse to umquhile Helen Sinclar, sister to the said Christopher his wife,—he craved suspension or reduction upon this reason, amongst others, that he was only decerned *pro interesse*, which had now ceased, she being dead. The Lords would have it heard in their presence; saving, that the party offered to prove, that he had intromitted himself, *et sic in rem versam*: for the umquhile Earl of Haddingtoun purchased himself free of all decreets obtained against his lady and himself *pro interesse*; because, from their marriage, he never meddled with any thing belonging to her, but she had *liberam administrandi res suas facultatem*.

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1649. June 28. DAVID GRAY *against* JEAN OGILVIE.

IN the suspension at David Gray his instance against Jean Ogilvie, upon a bond of a liquid sum, without condition expressed therein; the Lords,—in respect of a reason dipping upon David Gray his back bond, to umquhile Captain Gray, her spouse, who had deponed the money in David his hand,—thought good to try if the charger could have any more nor a third of that sum, and that the two part might be employed to the use of the children, seeing she was to marry another husband; they being *communis patriæ parentes*. And here it was also alleged, That there was some arrestment used by a creditor of the father. Likeas, the 4th of July, they ordained caution to be found to the minors, and would not receive her oath hereanent

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1649. June 28. JOHN MUIREHEAD *against* JOHN POLCKE.

IN the action of maills and duties pursued by John Murehead against John Polcke, his tenant, who suspends, That he could not pay, because his master plundered him, accompanied with a number of soldiers, about the time of the wicked engagement, and left him nothing; whereupon he had spuilyie depending; and is the more odious, that he offers him to prove, that it was done upon a