

stance against Alexander Arnote of Lochrigge and the Laird of Rowalland, the Lords did not respect 20 years' possession, with the clause *cum curiis et earum exitibus*; in respect the Laird of Rowalland his superior had these lands within his barony, *cum* ————— and other points of jurisdiction.—*See below,*

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1650. *January 11.* ALEXANDER ELPHINGSTONE *against* LORD ELPHINGSTONE.

IN the action pursued by Alexander Elphingstone against my Lord Elphingstone, the Lords sustained the same, upon a missive that was holograph, all written with Mr James Elphingstone of Barnes, his father's, hand to Gorden of Killoche, the said Alexander his mother's brother; both for stock and brock, as the said letters bear, because the holograph was proven. Neither did they respect the registrate bonds five or six years before, and produced in the process, because of the clause in the foresaid letter, which was long posterior; but they ordained the said Alexander to make cession thereof in favours of the said Lord.

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1650. *January 11.* The LAIRD of CROMLIX *against* JAMES KER.

IN the suspension at the Laird of Cromlix his instance against James Ker, the Lords found the letters orderly proceeded, notwithstanding the decreets obtained against him before the sheriff of Pearth, upon arrestments; because he ought not to have made payment; but, in respect of James Ker's arrestment, to have suspended upon a double pouding; wherein all parties' rights might have been discussed, and the decreets being produced, sundry nullities might have been alleged.

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1650. *January 12.* ROBERT TAILYEUR *against* ARNOTE of LOCHRIGGE and the LAIRD of ROWALLAND.

[*See page 464.*]

IN the double pouding against Arnote and Rowalland, Arnote alleges now, That he is infest *cum* —————. And it is answered by Rowalland, that he did use the attachment first, and ought to be preferred. But Arnote alleged the first decret.

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1650. *January 12.* SPENCE *against* DOWGLAS.

IN the action of registration, Spence against Dowglas, where the execution of the summons was offered to be improven by way of exception, no other being

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