

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 ommissa 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.

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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.

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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.

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