

position from umquhile John Kincade, in Gogar, who had infest his father,—urged, upon the disposition, Robert Kincade lawfully charged to enter heir to his father, to enter himself to the superiority, that he, being retoured specially, might hold of him; as also, craves it to be declared against the Laird of Hal-toune, that he ought to hold of him, superior to the said Robert, who was to lose the superiority, if he did not enter. And this is the order in such a case, when the immediate superior is not entered himself; since the special retour should bear of whom holden, that the precepts of the Chancellery may proceed thereon.

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1650. January 16. MAKCALA against SCOT.

IN the pursuit, Makcala against Scot, the reason of suspension proponed by Scot, That she was clad with a husband when she gave the bond,—was repelled as irrelevant; because it was offered to be proven that her husband was separated from her, and she had pursued sundry actions without his concurrence, wherein she had prevailed. And this maxim of law,—That a woman clad with a husband cannot be bound,—obtains only where her husband may suffer prejudice if she should contract debt; or, if she herself should be prejudged by subscribing of bonds with her husband, *reverentia maritali*.

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1650. January 16. The EARL of PANMURE against SIR DAVID CUNINGHAME.

THE Earl of Panmure, pursuing Sir David Cuninghame, dwelling in England;—it was urged by the defender, That it might be expressed in the decret, that the same should have only execution against the defender's goods in Scotland. Which the Lords found not necessary to be adjected, since the decret obtained in Scotland could have no execution *extra territorium*; but that could not hinder the said Earl to seek his own, by virtue of the bond foresaid, either through real or personal execution, as the Judge there should find meet, after the production of the bond.

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1650. January 16. The COLHEUGHERS of CARNETYNE against CHARLES POLLOCKE.

IN the suspension at the instance of the Colheughers of Carnetyne against Charles Pollocke, who had charged them, upon a decret before the Lords, by the which they were ordained to return to their work, reserving *hinc inde*, for damage and interest;—the reason, That they, being poor men, and many in family, were necessitated, as destitute of work and wages, to provide for them-

selves, having taken instruments that the charger's coal could not be wrought for water;—this reason, I say, was not found relevant, because the charger stands bound to them for a merk ilk day that they sat idle in his default; likeas, he offers him to prove, that when they took instruments, as is above expressed, so he took instruments also, that he had a new sink ready for working, which he was able to toom out or draw off the water within twenty-four hours. Neither were they poor, who became tacksmen to another work, and gave wages to others, whereby they strive to ruin the charger. And the like incident of interruption, by the ruin of a sink, falling out of before, they did not leave their work, in respect of the mutual bond, but wrought on till this time.

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1650. *January 16.* MR GEORGE STRATOUNE *against* THOMAS THOMSONE.

IN the suspension at Mr George Stratoune's instance against Thomas Thomson, charging for 2000 merks upon a bond made to his wife and him, at the desire of umquhile James Stratoune, his father;—the reason, that it was for the tocher due to the said Thomas, and that he had discharged to the said umquhile James his contract of marriage, and all that he could crave, and so could not be charged upon the said bond, which was given for tocher;—this reason, I say, the Lords did not respect, because they thought that the said James could not be of so short memory but he knew of the discharge: and yet, being to provide his bairns, thought that of conscience he ought to provide likewise payment of this 2000 merks, instead of the tocher discharged without payment made; or he would not have urged his son to give such a bond, and so burdened him, if he had not thought it due.

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1650. *January 17.* LITTLEJOHNE *against* DAVID BAILYIE and HISLOPE.

IN the suspension, Littlejohne against David Bailyie and Hislope, to whom the said David is curator,—the consigned money was ordained to be given up to the said David, he finding a second cautioner, by him who was found in the act of curatory, for the suspender's soverty; especially seeing the minor was out of the country, who should grant discharge with consent only of his curator. As also, the nearest of kin would have had up the same money upon caution, alleging that the minor was dead.

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1650. *January 17.* JOHN HUTCHESONE *against* _____.

JOHN Hutchesone, pursuing some minors, bairns of a second marriage, as heirs.