

under the Act of Grace, and therefore assoilyied. *Vide* the information in it. *Vide supra*, num. 667, [November 1677.] *Advocates' MS. No. 715, folio 317.*

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1678. *January 29.* The TAILORS of EDINBURGH *against* NICOL HARDY.

THE Tailors of Edinburgh obtain a decret of neighbourhood, as to their land in the Cowgate, against Nicol Hardy, writer to the signet; who presents a bill of suspension, bearing, that his brewhouse and building was conform to a contract betwixt his father and the incorporation in 1642, and betwixt himself and them in October last.

The Lords ordained Harcouis to visit the ground and report; who did so, and settled them in sundry of the controverted points, and ordained Nicol to rectify some parts of his building. And there was an ambiguous clause in the last agreement, that he should raise it no higher than the present building. See the informations of it beside me. *Advocates' MS. No. 716, folio 317.*

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1678. *January 29.* AGNES WILKY, Relict of Henry Morisone, *against* CHRISTIAN MORISONE and GEORGE STUART her Husband.

AGNES Wilky, relict of Mr Henry Morisone, writer, obtains a decret against Christian Morisone, sister and heir to the said Henry, for implement of her jointure, and against George Stuart of Auldhame, advocate, her husband, for his interest; and thereon charges and denounces them both. Then, Christian dying, Agnes pursues George Stuart for payment. The Lords, on my Lord Pitmedden's report, found George, the husband, was not liable, except only *in subsidium*, in case payment be not recovered of the heir of the wife; and that the heir of line to Christian behoved first to be discussed, and so gave him *beneficium ordinis discussionis*.

Then Agnes gave in a bill, craving the interlocutor might be re-considered, and George at least might be principally and immediately liable *in quantum* he was *lucratus* by the marriage. This day the Lords refused this bill.

Mr Francis Montgommery was just stated in the like case, in a pursuit moved against him by the Lord Melvill.

There was another point debated in the said Agnes her process. She was provided to an annualrent of 400 merks furth of a tenement, which the heir caused to take down as ruinous; she contended he behoved either to rebuild it or be personally liable. The Lords ordained both parties to adduce probation anent the condition the houses were in the time of the contract of marriage; and if what the heir did was incumbent for a provident man, or if he willingly took down the houses when there was no necessity for the same.

The said Agnes, in the foresaid bill, urged the Lords' answer *in jure* upon the point; but they refused it. See the copy of the bill beside me. *Vide Dury, 17th January 1622, Hamilton and Sinclair; 5th July 1623, Brown and Wright. Advocates' MS. No. 717, folio 317.*