

1624. *November 26.* JOHNSTON *against* RORESON.

IN an action betwixt Johnston and Roreson, for payment of a yearly duty, conform to the defender's promise made to the pursuer,—the Lords found the promise null and ineffectual to produce any action against the maker, because it was a promise made by the defender to an interposed person, to the behoof and in favours of the wife during the time of their marriage; and so was not obligatory:—albeit it was replied that the promise ought to be maintained, seeing, howsoever it was made, *stante matrimonio*, by the husband, to the behoof of the wife, yet, since the making thereof, divorcement had followed; since which divorcement, and also before the divorcement, the promise had taken effect by payment-making of the yearly duty promised, divers years both before and since they were divorced. Notwithstanding whereof the promise was found not obligatory.

*Act.* M'Gill. *Alt.* Cunninghame. Gibson, *Clerk.* *Vid.* 9th January 1623, Marshall; 11th January 1625, Hamilton's Inhibition; 21st December 1626, La. Foulis.

*Page 154.*

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1624. *November 26.* JOB *against* KER.

IN an action of spuilie, pursued by Job *against* Ker, an exception of poinding being proponed to elide the spuilie for a term's duty addebt to the expient by the pursuer, which he was obliged to take to pay to him; and it being replied that the poinding for that term could not elide the spuilie, seeing the defender placed in other tenants in the land that year, for the which the poinding is used, which tenants so placed, and in-put by himself, laboured the ground that year, and the pursuer left the same, and removed therefrom before, so that he could not be debtor in that year's duty;—this reply was only found relevant to be proven by writ, or oath of party, seeing it tended to prove payment of a duty contained in a written tack, and so to make the tack and poinding thereupon ineffectual;—and would not admit the same to be proven *per testes omni exceptione majores*, as the pursuer offered.

*Hay, Clerk.* *Vid.* 25th November 1624, Bisset *against* Bisset; and 26th February 1631, L. Garthland; where none may poind their own ground.

*Page 154.*

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1624. *November 27.* MAXWELL of PORTRAK *against* ———

IN an action of removing, pursued by Maxwell of Portrak *against* ———; the Lords found, that a sasine of the lands libelled, (being of old kirk-lands of the abbacy of Melross, now erected in a temporal lordship,) which sasine, given to the pursuer, proceeded upon the Earl of Melross, who was lord of the erection, his precept of *clare constat*,—was a sufficient title to produce this action to