

found this defalcation reasonable, and allowed the said payment; and found that the executors needed not to abide any sentence for the said debts to have been obtained by the defunct's creditors against them, but that they might have paid the same without sentence, they proving the debts to have been truly owing. And albeit there had been no payment, nor yet sentence, yet they found the defalcation relevant, bearing that the defunct was owing such particular debts, which being proven, the same ought to be taken off the gear, before the relict or her executors could claim any of the gear, for the relict's portion thereof.

*Act.* Baird. *Alt.* Burnet, *major.* Gibson, *Clerk.*

*Page 377.*

1628. *July 9.*

LAUDER *against* JAMES MOWAT.

IN a suspension, Lauder *against* James Mowat, the said James being sheriff-clerk of Berwick, was charged by the said Lauder to extract a decret obtained in the court of the sheriffdom; and the clerk suspending upon this reason, that there was never such a decret, and producing the process to verify the same, no minute of any sentence was to be found in any part of the process; and the charger producing the Laird of Eistnisbet, who was sheriff for the time, his letter to verify that he had pronounced that decret, and which letter bore the same;—the Lords, notwithstanding of the sheriff's writ proporting that there was a decret pronounced and given by him, suspended the letters *simpliciter*, in respect of the said process, which had no such warrant, and that the clerk in his office ought to have greater faith with the process than the assertion of the judge, *cui non creditur nisi quantum constat ex actis*:

*Act.* Dunlop. *Alt.* Mowat. Hay, *Clerk.*

*Page 385.*

1628. *December 10.* The LAIRD of LEY *against* The MINISTER of LANARK.

THE Laird of Ley, having presented one to the preceptory of the hospital of St Leonard's, who, seeking letters conform to that provision and gift given to him by the Laird of Ley, as patron of that hospital; and the minister of Lanark compearing and alleging, that he was provided to the said preceptory by the king's majesty, and had obtained thereupon letters conform, by virtue whereof he was in possession; likeas his predecessor was presented by the king, and by virtue thereof he was also in possession, whereby it was evident that the right to present was only proper to the king; and they being so in possession, no letters conform ought to be granted upon the Laird of Ley's gift:—this allegiance was repelled against this summons, craving letters conform: without prejudice always of the defender's right thereupon; upon the validity whereof, or of the pursuer's right, the Lords found it not proper to dispute in this process and action of letters conform; but reserved the same to be tried by suspension or double poinding, or in any other lawful pursuit, *prout de jure*, whereto this decret should not be prejudicial.