

1628. *July 4.* RAILET *against* SIR LEWIS LAWDER.

A CHARGE given by one Railet, a Frenchman, to Sir Lewis Lawder, sheriff of Edinburgh, for apprehending of one, not sustained, because it was given upon a Sunday, and that a fasting Sunday.

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1628. *July 4.* ALISON HAMILTON *against* The LAIRD of KINBRACHMONT.

ALISON Hamilton, relict of Gavin, Bishop of Galloway, pursued Kinbrachmont, one of the cautioners in her contract of marriage for her husband, for implementing of her contract, whereby her husband was obliged to infest her in certain annual-rents, one of 400 merks, another of 300 merks. Alleged for the defender, and found by the Lords, That these defalcations should be made. *Imo*, After her husband's death, her children being confirmed executors, they being minors, she gave up inventory and made faith, in which was contained 2000 merks of pose, that was in her husband's purse the time of his decease. For this, the Lords found, she might have had retention, and her negligence could not prejudice the cautioner. Sicklike there was, of utensils and domiciles, £1000 which she might also have retained, and therefore was bound upon her. And further, it was found, That the defender was not astricted to prove her intromission with these, otherwise than by the testament given up by herself; which proved sufficiently against her; unless she would allege, relevantly, that some of the moveables were in other men's possession the time of her husband's decease, and that she never intromitted with them.

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1628. *July 10.* MARGARET EDGAR and WALTER CANT *against* EDWARD EDGAR'S BAIRNS and their TUTORS.

MR William Maxwell of Ravens, being addebted in the sum of £6000 to divers creditors, as principal, and with him Walter Sinclair and Edward Edgar as cautioners: The cautioners being distressed, and having paid the sums for him, Edward Edgar makes David Johnston assignee to the bond of relief given to him as cautioner by Ravens; whereupon David comprised the lands of Ravens. Edward Edgar being dead, his relict Margaret Edgar, and Walter Cant her husband, pursued for a third of the moveables pertaining to her umquihle husband, and, among the rest, for a third of the sums comprised for, by virtue of the assignation foresaid; or else to be assigned to the third part of the comprising, after it was found that the assignation which was made by Edward Edgar upon his death-bed, was null, in so far as it could prejudice his relict. It was further alleged by the tutors to Edward's bairns, who were convened, That she could crave no part of these sums, because they were not moveable, but heritable, in so far as the bonds owing by Ravens and his cautioners were herit-