

thereof, either before the reformation of the religion, divers years, or thirty years since; and no otherwise. And they respected not the said decret and three years' possession therein contained, and pointing therefore.

*Act.* Fletcher. *Alt.* Nicolson. Hay, *Clerk.* *Vid.* 17th March 1629, Yeaman *against* Stuart.

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1629. *March 12.* CUNNINGHAME *against* The SHERIFF of STIRLING'S DEPUTES.

THE Sheriff-depute being charged to take a rebel, who suspending, on obedience and diligence done by him in searching and seeking him, and that he could not be found, as instruments produced bore; and the charger replying, that, since the instrument, the said depute had been in company with the rebel divers times within the place of his jurisdiction, where he had at that time power to take the rebel;—this allegiance was sustained, being proven to infer sentence against the depute for not taking the rebel; for no further was sought by the process; for payment of the sum was not sought therein: and it was not found needful that the charges of the caption should have been left with the depute, or delivered to him for his warrant of taking the rebel at the times fore-said of his being with the rebel; neither was the want of these charges found any cause whereby the depute should be excused to take him, he having received a copy subscribed by the messenger the time of his first charge.

*Vid. ult.* and 4th July 1628, Rachelet, and the cases there cited; and 12th June 1630, Mr Rodger Mowat; 13th July 1630, Hay *against* E. Marshal.

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1629. *June 19.* SAMUEL GRAY *against* ———.

MR Samuel Gray, having charged his debtor for payment of a sum, who suspending, and consigning the same,—in the suspension compeared the mother to his wife, and desired that the money should be employed to her daughter in liferent, for implement of the contract of marriage, *pro tanto*, made betwixt the daughter and the said Mr Samuel, whereby he was obliged to provide her to a yearly annual-rent greater than the annual-rent of the sum consigned, to be uplifted out of his lands; which lands, seeing he had sold the same, she, as person contractor in the contract of marriage, had interest to crave of the Lords, to be fulfilled to her daughter by the employment of this money so far as it might extend, in place of the annual-rent out of the lands. This being considered by the Lords, they found it reasonable; and albeit neither the good-mother nor the daughter his spouse were parties, nor called in this suspension,—yet the Lords found that this money should be employed to the woman in liferent; albeit the particular sum was not mentioned in the contract, and albeit the daughter also compeared, and declared that she craved not that employment to be made by her husband, but consented that he should take up the money, and use the same at his pleasure. Which was not respected by the Lords.

*Act.* Present. *Alt.* ———. *Vid.* 9th January 1623, Marshal *against* Marshal.

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1629. *July* 16.

*HIGE against* PLUMBER.

ONE having taken lands in wadset, and pursuing another, haver of the writs of these lands, for delivery thereof,—who compearing, and producing a bond of borrowed money from the defender by the pursuer of the wadset, for satisfying whereof he alleged that he had given these writs in pawn and security before the wadset;—the Lords sustained the allegiance, and found that the impignoration should be proven by the writ or oath of the wadset-giver who impignorated the same, and not by the oath of the wadset-taker, who was probably ignorant thereof.

*Gibson, Clerk.* *Vid.* 21st December 1626, Sir Ja. Dundas.

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1629. *July* 16. SKEEN and FORBES *against* The GOODWIFE of BYTH.

AN husband being obliged, in his contract of marriage with his second wife, to provide the bairns of that marriage to all lands to be conquered by him during their marriage; after the husband's decease, the daughter, being only bairn of that marriage, pursues her father's mother, and his apparent heir, the son of the first marriage, to hear it found that her said father, the time of the second marriage, conquered the lands of ———, and put, in the securities of that conquered lands, his own mother's name, to his own proper use, only, to the prejudice and elusion of the said contract; and that the money was paid for the price of the land by himself off his own monies, and had only borrowed his mother's name; and consequently concluding that the mother should, *habili modo*, denude herself of the right of the land, in favours of the pursuer. This action was sustained, albeit the other son was called only as apparent heir, and not as heir, or as lawfully charged to enter heir: albeit the defender alleged, that one as heir ought to be called, for that conclusion to denude herself in favours of the pursuer was not allowable against her who was not obliged in any deed to the pursuer; and where it appeared to take away the defunct's heritage, (giving that her name was borrowed,) his heir, or one who may represent him by some form in law, ought to be called. Which allegiance was repelled.

*Act.* Advocatus and Lermonth. *Alt.* Nicolson. *Scot, Clerk.*

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1629. *November* 20. ——— *against* ———.

THE defender being pursued by the creditor to his father, wherein he was