

*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