

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

*Page* 447.

---

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.

*Page* 463.

---

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.*

*Page* 464.

---

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

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

called as executor, or intromittor with his father's goods; and for proving thereof, a decret being produced, at the same pursuer's instance, against this same defender, for another debt of his father's, wherein he was convened *iisdem nominibus*: which, being referred to his oath in that process, and he holden as confessed for not compearance, the decret of certification, upon contumacy in that process, was not found to prove in this process; but that he ought to prove otherwise, albeit it was given betwixt thir same parties.

Gibson, *Clerk.* *Vid.* 22d March 1628, Farquhar *against* Campbell, and the cases there cited; 26th January 1631, L. Gadgirth *against* L. Afflect.

Page 468.

1629. *December 11.* The SHERIFF of GALLOWAY *against* The LAIRD of CRAGCAFFIE.

THE sheriff pursuing his own tacksman, to find caution to pay the tack-duty, or else to remove; and, in this process, Cragcaffie compearing, who had comprised the lands, and was infest, or done diligence, which was equivalent; and alleging thereby, the lands to be his, and that the pursuer could not be entered to the land, though the alleged tacksman should not find caution, the pursuer's self having no right to the land, and nothing being produced for him: for his setting of a tack of that which he had no right to, could not furnish him any interest to the land, against him who had right, seeing he was now a party, and the cause ought not to be considered as betwixt the setter and the tacksman only:—The allegiance was repelled: and, but production of any right to the land, in the pursuer's person, the action was sustained against his own tacksman; albeit the allegiance was not proponed for him, but for another clad with a right.

*Act.* M'Gill. *Alt.* Neilson. *Scot, Clerk.* *Vid.* 18th June 1629, Dumbar *against* Turner.

Page 473.

1630. *January 19.* BRUCE *against* WARDLAW,

MENTIONED 14th January. The question being betwixt two parties, which of them had right to hold courts within the lands of Torrie, which lands are holden of the Bishop of St Andrews; which right was claimed by Bruce as bailie-depute to the Lo. Lindsay, who had an heritable right and sasine thereof from the bishop, to whom he was heritable bailie within his regality of his lands in Fife; and the other claimed the same as infest by the bishop in the lands of Torrie *cum curiis*; and alleged, that the Lord Lindsay's sasine was null, being appointed by the bishop's precept insert therein, to be taken at the castle of St Andrews, for all the lands within that bailiary, albeit the lands lie far discontinuous; and that the bishop, nor no subject, can make an union but by the king's confirmation. This allegiance was repelled, and the sasine sustained; seeing the Lords found, that this was not an union of lands, which indeed no