

1629. *March 5.* ————— *against* The LAIRD of RENTONE.

THE procurator-fiscal being decerned executor, surrogates certain of the defunct's creditors, who thereafter confirm the defunct's testament. Another of the defunct's creditors pursues one, to whom the creditor surrogated by the procurator-fiscal, had sold some of the defunct's goods and gear, before the confirmation, but after the surrogation, as universal intromitter with the defunct's goods and gear. It is excepted by the defender, That he bought the gear from the parties who were decerned executors, shortly after confirmed. It was replied, That the defenders had no right to dispoñe before confirmation. The Lords repelled the reply, and admitted the exception.—*5th March 1629,* ——— *against The Laird of Rentone*; who bought some sheep pertaining to the umquhile William Douglass of Blachirstoune, from the dative.

*Page 49.*

1629. *March 5.* LADY BORTHWICK *against* SIR WALTER SCOTT of GOLDIELAND.

A CONJUNCT infestment granted to a man and his wife, *stante matrimonio*, by his wife's brother, although the husband paid a sum of money therefore, but not equivalent to the avail of the land, is not found *donatio inter virum et uxorem*; but her right for her lifetime is thought to proceed from the love of the brother, and, in that respect, she may bruik her liferent of the said land after her husband's decease, without any burden imposed by her husband without her consent.

*Page 264.*

1629. *March 6.* LADY RENTONE *against* Her SON.

ALTHOUGH a man, by contract of marriage, be obliged to infest his future spouse in all his lands, roums, annualrents, and possessions, that he shall happen to conquesche during the time of the marriage; yet, if he acquires the tack of a teind to himself and his heirs, and the wife pursue the heir to provide her there-to during her lifetime;—the Lords found the heir was not subject thereto by the contract of marriage, seeing she could not be infest therein.

*Page 264.*

1629. *March 7.* The LADY OLDBARR [OF ARBLAIR] *against* Her HUSBAND'S HEIR.

THE Lady Oldbarr having paid an heritable bond, *per ignorantiam*, made, by

her umquhile spouse, to Mr Thomas Lundie, minister, she being but executrix to her husband, and, instead of a discharge, received only but the principal bond, and cancelled the same;—she pursues her husband's heir for repayment of it to her, as having paid the same for him, which was due to the heir to pay, upon this ground of law, *quem sequuntur commoda, equum est ut eundem sequantur incommoda*; and, seeing the executor, by law and Act of Parliament, James 4, Parliament 6, chap. 76, is obliged to relieve the heir of the moveable debts; so, of reason, the heir ought to relieve the executor of heritable bonds owing by the defunct. The Lords sustained the summons; but the heir alleged that the receiving of the bond from the creditor was not sufficient, except the executrix proved the payment of the debt, and that the cancelled bond was entire and owing by the defunct, the time of his decease: which the Lords found relevant to be proven, *viz.* the real payment of the debt by the creditor's oath; and that the sum was owing the time of the defunct's decease, by the oath of the heir.

Page 16.

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1629. *March 10.* LADY KNOCKHILL *against* SHAW.

A BOND given for payment of an annualrent out of certain lands, which are comprised by a third person being a singular successor, does not affect the land nor the singular successor, but is personal.

Page 36.

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1629. *March 13.* The EARL of BALCLEUCH *against* SCOTTS of HAILL.

OFFER of the principal money without consignation, does not liberate the maker of the offer of annualrent until the principal sum be paid.

Page 10.

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1629. *March 13.* DAVID MURRAY *against* DRUMELZIARE and LORD YESTER.

A DECREET, obtained against tenants for spulyiation of their teinds, who suffered great quantity above the avail to be obtained against them for their contumacy, not compearing to depone upon the quantity of the same, being referred to their oath; can infer no lawful distress whereupon their master, being tacksman, can crave warrandice against the letter of the tack, except the quantities had been otherwise proven; but the Lords permitted David Murray, pursuer, by the same summons, to prove the just quantity of the said teind verified, that, according thereto, he might pursue his warrandice: as was practised by the Laird of Old Farr [probably *Oldbarr*,] against —.—.—4th *March* 1629.

Page 250.