

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.