

1632. February 7. LOOKUP against ALEXANDER DOWNIE.

IN a contract of marriage, betwixt John Morton and ——— Lookup, his spouse, then a widow, he being obliged to infest her in a tenement of land; and, before this contract, he being debtor to Alexander Downie; either of the parties having done all lawful diligence to obtain the right of this land; wherein they were equal in diligence, except that the defunct was debtor to Downie before the contract;—the Lords, notwithstanding of his priority,—albeit that the contract bore, *no tocher to be given to the husband*, neither could any thing be shown, in writ, to prove that he had received any thing, in remuneration from the wife; whereby it was alleged, that she ought only to be respected as another common creditor;—yet preferred her to the right of the land, by virtue of the said contract of marriage.

*Act.* Gibson. *Alt.* Rollock. Scot, Clerk. *Vid.* 19th June 1635, Walker.  
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1632. June 28. LYON against The BAILIES of FORFAR.

ONE Lyon, pursuing the Bailies of Forfar for payment of his debt; because, his debtor being rebel, was apprehended by a messenger by warrant of letters of caption, and was offered, by the messenger and the party pursuer, his creditor, to the said bailies, and desired to commit him to ward while he were satisfied; and they suffering the rebel to escape, and not having put him in ward, therefore they were convened for the debt; and they alleging that the charge was not lawful, being executed in the end of October, about or after six hours at night, they had no reason to obey the same, being given under night; specially seeing they had no sufficient tolbooth nor jail where the rebel might be kept in firmance and surety; and they being but magistrates of a poor small burgh: likeas they desired surety of the party for payment of the expenses and entertainment of the rebel, which he refused to do, and so they had no necessity to ward him: and the pursuer replying, that, after the charge given to the bailies, they abode in company with the rebel till ten o'clock at night, and suffered him to depart without doing any diligence to detain and put him in ward, as they ought; albeit then they had sufficient power to keep and incarcerate the rebel, he being then single and alone, and there being two bailies present, with the party creditor and the officer who apprehended him, and the rebel having supped with the bailies and the officer, in one of the bailies' houses; which discovers their fault; and the not sufficiency of the jail makes them the more culpable, being the head burgh of the sheriffdom:—This exception was repelled, and the reply was admitted to sustain the charge; and the refusing to find surety for entertaining of the rebel, was found no cause why the magistrates should have disobeyed the charge.

*Act.* Gibson. *Alt.* ———. Gibson, Clerk.

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