

1634. *July 18.* AGNES RICHARDSON (OF RIECHIESON) *against* HALBERT MAXWELL OF FREIRCARSE.

AGNES Richardson obtained decret, before the commissary of Dumfries, against Halbert Maxwell of Freircarse, decerning him to make payment to her of £80, for the which she was cautioner for Halbert's son, and whereof he promised to relieve her. The decret is given upon Halbert's contumacy in not compearing to give his oath; whereupon the commissary took the pursuer's oath. This decret is suspended by Halbert upon nullity, as given by the commissary upon a civil cause exceeding the sum of £40, contrary to the commissary's injunctions. The Lords found the letters orderly proceeded; because they had been in use to allow commissaries' decreets given upon 1000 merks; and this being a poor widow, they would not put her to a new process for a matter exceeding the custom but 40 merks.

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1634. *July 25.* The LAIRD of RENTON *against* The LADY HUNDSWOOD.

THERE is a bond by the Laird of Rentone to John Stewart, Francis Stewart, Robert Douglass, and the Goodman of Morestoune, whereby Rentone is obliged to them, for a tack set to him of the teinds of Flemyngtoun, to pay to the fore-said persons, having best right, the sum of 500 merks yearly; and farther, obliges him to set, to the Lady Hundswood, her teind during her lifetime, for £100 yearly. This bond is registrate; and, within half a year after the registration, the Laird of Rentone obtains a discharge of his bond and hail contents thereof, from Robert Douglas, Francis and John Stewarts; but Morestoune was at that time deceased, and did not consent to the discharge. Rentone pursues the Lady Hundswood for the wrongous intromission with the teinds. She defends for herself, upon the clause contained in the registrate bond. To the which it was replied, That this bond would not defend her:—*1mo*, It was not granted to her. *2do*, It was discharged by the persons to whom it was granted. Duplied, The bond being registrate, became her evident, in so far as it concerned the teinds therein mentioned. *2do*, A clause, being conceived in favours of a third party, either in bond or contract, cannot be discharged but by consent of the third party. *3tio*, Morestoune consented not to the discharge, who was one of the parties to whom the bond was granted. The Lords found the exception and duply relevant.

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1634. *November 12.* A. B. *against* JOHN CUTHBERT, BAILIE OF INVERNESS.

A. G. pursues James Cuthbert, bailie of Inverness, for having committed A. B. to ward, at the pursuer's instance, by letters of caption for the sum of £95: Suffered him to escape; and, therefore, convened the said James Cuthbert for the