

1666. July 18. HEDDERWICK *against* WAUCH.

THE Commissioners for the Borders, upon the verdict of the inquest, that the panel was guilty of reset of theft, having ordained the panel to pay 100 pounds sterling within a short time ; and if he should fail, to be sent to Barbadoes, and lose his escheat :—

The Lords found, That by that verdict there did arise to his Majesty the casualty of his escheat ; whereof, there being *jus quæsitum*, the King and his donatar could not be prejudged by a doom which is contrary to law. And that, in such cases of capital crimes, the law having determined the pain, and especially the loss of the escheat, no judge (even the Justice-General,) could moderate or lessen the same.

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1666. July 19. ELEIS *against* WISEHEART.

A WIFE being obliged, with her husband, to pay a sum of money, and to infest a creditor in her land : though the bond was not sustained as to the personal obligement to pay, yet it was found valid as to the obligement to infest, and the procuratory of resignation contained in the bond : And the wife, notwithstanding, having disponded her land, she was found liable for the sums, as damage and interest.

This decision seems hard ; in respect, albeit a woman may dispone her land with consent of her husband, yet she cannot bind to pay a sum of money : and, in the case foresaid, *non agebatur* that she should dispone her lands ; but that she should be liable to the creditor, and, for surety, he should be secured in her land ; and the principal obligation being void, the accessory of surety could not subsist.

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1666. July 19. [DEBATE ANENT PROVING the TENOR of a COMPRISING].

IT was debated, but not decided, whether the tenor of a comprising may be proven. There is an Act of Parliament, Ja. Vi. Par. 6. That the tenor of letters of horning should not be proven ; and there is *eadem*, if not more, *ratio* as to comprisings, the solemnities being greater and more. And if a comprising, which is, in effect, the execution of a messenger, may be made up by a probation of the tenor ; *a paritate rationis*, poindings, and interruptions of prescription by citations, and executions, and intimations of assignations, may be made up by witnesses ; and arrestments and decreets.

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