

January, 1676.

The Advocates debarred being restored upon the 10th of January, our Collection and Observes return to their former orderly channel.

*Advocates' MS. folio 238.*

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1676. January. DOUGALL M'PHERSON against ———

A HUSBAND sells land; and obliges himself, in the disposition, to obtain his wife's consent, she being infest therein. She utterly refuses to consent. He is charged, denounced, taken with caption, and imprisoned, on the not implement of that clause. He offers to refund the price he got, *cum omni causa*. QUÆRITUR, When *factum in obligatione deductum* becomes imprestable, at least *valde difficile*, if *venditor fungitur et liberatur præstando interesse*. *Jure non licet a contractu perfecto rescilire, nec est locus pœnitentiæ: initio, est voluntatis, postea fit necessitatis, L. 5. C. de Obligationibus et Actionibus*. If the Lords, *ex jure prætorio*, by a mixture of equity, would reponne them each to their own place, *nescio*. But if he can find caution, or give warrandice in case of the existence of a distress, by her evicting her life-rent upon his decease before her, I think it should assoilye and satisfy, since *dubius est eventus* if ever she has right to that land sold and dispooned. But I think the Lords would not force her to consent, unless the husband offered her as much elsewhere, uncontroverted and clear.

They say, the parties were Dougall M'Pherson and ———

*Advocates' MS. No. 454, folio 238.*

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1676. January. ANENT THIRLAGE.

THE Lords found a clause in the reddendo of a feu-charter, *pro alio omni onere et consuetudine*, sufficient to liberate from astriction to a mill; though neither in the dispositive clause, nor in the *tenendas*, there was the least word of the clause *cum molendinis et multuris*. See the contrary of this decided, in Dury, 17th July, 1629, *Newliston*.

*Advocates' MS. No. 455, folio 238.*

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1676. January. ALEXANDER RITCHIE against WAUCHOP of Dreghornie.

ALEXANDER RITCHIE having obtained a decret for poinding of the ground of the lands of Dreghornie, upon an infestment of annualrent furth thereof, (which