

and, seeing his wife fell no part thereof, he having one bairn living procreate of another wife, the half only pertained to the defunct; and so £500 of the £1000 was only ordained to be restored.

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ROBERT DALLING'S RELICT *against* ROBERT DOUGLAS'S HEIRS.

BY contract of marriage, umquhill Robert Dalling is obliged to lay out, upon annualrent, the sum of 10,000 merks, and take infestment to himself, and to his wife, in conjunct fee, and their heirs; so oft as the same shall be redeemed, so oft to re-employ the same. The money was bestowed upon the lands of Arnistoune, and, after Robert Douglas his decease, was redeemed, at Whitsunday 1628, from his relict and his heirs. At the time of redemption, Robert Douglas' heirs being minors, their tutors offered the money to the relict, she finding caution to make the principal sum furthcoming after her decease, in respect they declared they could find no good to take the money for the annualrent. She refuseth, and the money was not outted till Lammas 1628; at which time 1000 merks was gotten waired, and other 3000 lay dry till Martinmas. The relict charges the minors and their tutors for her annualrent of 10,000 merks from Whitsunday 1628 till Martinmas thereafter, as they who were obliged to bestow the said sum after the redemption, conform to the contract. The defenders allege, That they had done all diligence that they could use, and could be no farther astricted. The Lords sustained the charge, in respect of the foresaid diligence, for the term of Martinmas; and ordained the defenders, in time coming, to bestow the money, or else to pay her annualrent for the same.

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[The LAIRD of LENNY, Bailie to the Burgh of Aberdeen, *against* The VASSALS of the BISHOP.

AND [*Vide* Procurator-Fiscal of Sanquhar against Andrew Wilson, 9th December 1628], sicklike, unlaws for absence from bailies of regality's head-courts may not exceed £10.

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1627. January 13. ———— *against* The MAGISTRATES of EDINBURGH.

THE Provost and Bailies of Edinburgh [were] decerned to pay the debt for letting of the debtor escape that was put in the ward by letters of caption at a creditor's instance, although it was alleged that the Provost and hail Bailies were not private to the outtaking of the person warded, but only two of the bailies, that were his friends; and so they only put him to liberty, and should be subject to the payment of the debt, at least should be first discussed. Notwithstanding, the Lords found, That the hail might be convened at the instance of

the creditor, and these that were guilty of the escaping may pursue their colleagues for their relief.

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1627. *January 14.* The HEIRS and EXECUTORS of the late JOHN HAY.

BOND moveable cannot be adjudicate.

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1627. *January 16.* MR JOHN HAMILTOUNE *against* The LAIRD of KILBAITH-MONTH.

THE husband and his wife assign to a creditor the sum obliged by the wife's father to the cedent by contract of marriage, and thereby ordained it to be employed to the behoof of the two married persons and their heirs. The assignee charges for the tocher. The father, promitter of the tocher, suspends; alleging, that he ought not to make payment to the assignee; but first ought to have the conditions of the contract fulfilled. The Lords suspend the charge, and ordained the suspender to have the conditions of the contract fulfilled to him when he had made payment.

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1627. *February 1.* SCOUGAL *against* CRAIGIE'S DEBTORS.

THE Lords preferred an assignation made by a bankrupt to a just creditor, *in meditatione fugæ*, to an arrestment made by the other creditors of that same debt, which was assigned; by reason the said assignation was intimated to the said creditors that same day of the arrestment.

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1627. *February 2.* LEWIS SOMERVILL *against* The LAIRD of EDMONSTOUNE.

A REBEL denounced in December 1624, his gift of escheat is taken in August 1625:\* the donator thereby claims right to the haille farms, 1625.\* The Lords found he had only right to the Whitsunday term or half term, and the rest to be in the king's hand, while a new gift be obtained thereof.

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\* 1635 in M.S.