

1628. *July 4.* RAILET *against* SIR LEWIS LAWDER.

A CHARGE given by one Railet, a Frenchman, to Sir Lewis Lawder, sheriff of Edinburgh, for apprehending of one, not sustained, because it was given upon a Sunday, and that a fasting Sunday.

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1628. *July 4.* ALISON HAMILTON *against* The LAIRD of KINBRACHMONT.

ALISON Hamilton, relict of Gavin, Bishop of Galloway, pursued Kinbrachmont, one of the cautioners in her contract of marriage for her husband, for implementing of her contract, whereby her husband was obliged to infest her in certain annual-rents, one of 400 merks, another of 300 merks. Alleged for the defender, and found by the Lords, That these defalcations should be made. *Imo*, After her husband's death, her children being confirmed executors, they being minors, she gave up inventory and made faith, in which was contained 2000 merks of pose, that was in her husband's purse the time of his decease. For this, the Lords found, she might have had retention, and her negligence could not prejudice the cautioner. Sicklike there was, of utensils and domiciles, £1000 which she might also have retained, and therefore was bound upon her. And further, it was found, That the defender was not astricted to prove her intromission with these, otherwise than by the testament given up by herself; which proved sufficiently against her; unless she would allege, relevantly, that some of the moveables were in other men's possession the time of her husband's decease, and that she never intromitted with them.

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1628. *July 10.* MARGARET EDGAR and WALTER CANT *against* EDWARD EDGAR'S BAIRNS and their TUTORS.

MR William Maxwell of Ravens, being addebted in the sum of £6000 to divers creditors, as principal, and with him Walter Sinclair and Edward Edgar as cautioners: The cautioners being distressed, and having paid the sums for him, Edward Edgar makes David Johnston assignee to the bond of relief given to him as cautioner by Ravens; whereupon David comprised the lands of Ravens. Edward Edgar being dead, his relict Margaret Edgar, and Walter Cant her husband, pursued for a third of the moveables pertaining to her umquihle husband, and, among the rest, for a third of the sums comprised for, by virtue of the assignation foresaid; or else to be assigned to the third part of the comprising, after it was found that the assignation which was made by Edward Edgar upon his death-bed, was null, in so far as it could prejudice his relict. It was further alleged by the tutors to Edward's bairns, who were convened, That she could crave no part of these sums, because they were not moveable, but heritable, in so far as the bonds owing by Ravens and his cautioners were herit-

able; and the bond of relief given by Ravens to his cautioners behaved to be of the same nature with the principal bond; so that the relief was competent to the cautioner's heirs only, and not to his executors; and consequently the relict could have no third of it. This matter was much agitated among the Lords, whether the money being paid by the defunct, Edward Edgar, in his own time, the relief, conform to the bond, should be competent to his heirs or executors: Many inconveniences were represented on both sides, yet at last it was found competent to the executors.

The like was found betwixt Mr John Hart and Patrick Hart, his brother, 18th March 1630.

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1628. *July 11.* ROBERT ARBUTHNOT of FINDOWRY *against* PATRICK LIGHTON.

SICKLIKE, Robert Arbuthnot of Findowry, assignee constituted to the tack of teinds of Fairniffet, pursued Patrick Lighton, provost of Montrose, for spulyie, as intromittor with the duties, both stock and teind. Alleged, His uplifting of the mails and duties from the tenants, made him not a spulyier, because he uplifted only the ordinary fruits, whereof they were in use of payment divers years before to his author: However, the Lords sustained the summons to be proven, *prout de jure*; with this caution, that it should not infer a spulyie, but only wrongous intromission.

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1628. *July 22.* SMITH and HILSTON *against* WALTER HAY, Superior of the Lands and Living of BORTHWICK.

Two persons or more having comprised lands, if they shall charge the superior to enter them, he is obliged to do it at their own hazard, and he cannot refuse, by reason that he hath entered another before, and so has received a vassal already.

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1628. *November 14.* DAVID BETSON *against* The LAIRD of GRANGE.

IN an action, pursued by David Betson of Cardon, against the Laird of Grange; the pursuer summoned Mr Lawrence M'Gil and Mr Lewis Stuart to be witnesses in the cause. They alleged, That they could not be forced; for that which they were to be examined upon was, if they had seen at any time a reversion of certain lands amongst Grange's writs, which they could not do, being his advocates, and therefore were not bound to reveal any thing they had seen of his secrets. Replied, *Quivis potest cogi ad dicendum testimonium, quod est munus publicum.* It is true, an advocate is not obliged to reveal any advice