

In the said action, it was alleged, That Westraw was not obliged to produce procuratories nor instruments of resignation, where the charters made mention of them, nor precepts of seaisine, where the instruments of seaisine contained the tenour, conform to the Act of Parliament *in anno* 1594, cap. 214. The Lords ordained the charters and seaisine to be first produced, before they would admit the allegiance founded on the said Act.—*4th March* 1628.

[See the remaining part of the report of this case, 4th March 1618, in the Dictionary, p. 6688, No. 111.]

*Page* 91—93.

1627, *December* 15; and 1628, *March* 5. ARCHIBALD DOUGLAS *against* LAUDER.

THE minister of Northberwick, being addebted to one Lauder, makes him assignee to certain victual, to be paid to him by Sir John Hoome, for his stipend of the crop 1627. The assignation is dated in March 1627, and, immediately thereafter, intimated to the said Sir John, in April 1627. The said minister borrows from another man a certain sum, upon his bond, to be paid in September following. Archibald Douglas arrested the victual in Sir John Hoome's hands in July; and, October thereafter, raises summons against the said Sir John, to hear and see the arrested goods forthcoming to him. Compears Lauder, for his interest, and alleges, That he ought to be preferred, by reason of his assignation, first intimated, before arrestment; and Douglas alleges he used great diligence, in so far as he both arrested and raised summons first. Lauder alleged that Douglas's diligence was *nimia*, because he raised before the term of payment was come. The Lords preferred the assignee.—*15th December* 1627; and, *5th March* 1628.

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1628. *March* 7. WILSON *against* L. DRUMLANRICK.

AN arrestment may be used *activè*, for payment of sums contained in an heritable bond; albeit the sums of an heritable bond may not be arrested *passivè*.

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1628. *March* 11. ——— *against* ———.

THE donatar to the liferent of one of the Earl of Marr's vassals of Dryburgh, pursues a declarator. It is alleged, The summons must bide continuation, because it must be proven by the Earl of Marr, his superior. It was answered, By the Earl of Marr's seaisine, produced, it was clearly proven that the Earl is

superior lord of Dryburgh, which, if the defender will disclaim, the pursuer will acquiesce. The Lords found no necessity of continuation.

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1628. *March 11.* MURE *against* CUNNINGHAME.

THE sum of 200 merks being promitted in tocher to a woman, by her friends, in her contract of marriage, and the sum being pursued for, it was alleged, That the contract being subscribed but by one notary, did not oblige the party promitter of such a sum. The Lords repelled the exception, in respect it was contained in a contract of marriage; which the Lords are in use to sustain, albeit the same be subscribed but by one notary.

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1628. *March 11.* MACKMICHAEL *against* MAKFEGIE.

EXECUTORS are not obliged, in law, to pay annualrent for legacies, *ante sententiam*, except the testator provide that annualrent shall be paid by the executors.

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1628. *March 12.* The COUNTESS of DUMFERMLING *against* The EARL of DUMFERMLING, Her SON.

THE umquhile Earl of Dumfermling, Chancellor, in the contract of marriage betwixt him and my Lord Yester's sister, obliges him to provide his future spouse, in conjunct fee or liferent, of all the heritages that he should happen to acquire during the time of the marriage. Before he was married, he had right to the teinds of Fyvie, by tacks. After the marriage, he obtains the heritable title of the said teinds from the Marquis of Hamilton, as having the erection of Aberbrothick. After the Earl's decease, the relict pursues her son, to infest her in the heritable right of the teinds of Fyvie, conform to the contract. Her son is content, reserving the right of the tack which his father had acquired before the marriage;—and alleges, That his mother could have no more benefit by the infestment but the duty which was obliged, by the tack, to be paid. The lady alleged, That the posterior heritable right did diminish the former tacks. The Earl alleged, That the prior tacks did only sleep so long as the heritable right stood in the person of him that has right to both; but, if the heritable right be reduced, then the tack may waken and revive; or, if the heritable right be disposed to another person, the tacks may be reserved. Which last allegiance the Lords found relevant.—*12th March 1628.*