

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.*

And the like was found, 21st December 1634, *Young Lesmore* against *James Hutcheson*.

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1628. *March 13.* The LAIRD of LENNOX, and SOMERVELL, his Spouse, *against*  
The PROVOST and BAILIES of EDINBURGH.

IN actions for making arrested goods forthcoming, if the party who was debtor be dead after the arrestment, his heir or executor must be summoned to represent him.

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1628. *March 13.* ———— *against* ————.

A PURSUIT being intended upon a writ, the defender alleged a new transaction, which was first referred to the pursuer's oath; and he being willing to depone, the defender resiled, and alleged he might prove his exception *prout de jure*. The Lords suffered the defender to resile; but ordained him to prove the transaction by writ, and no otherwise, seeing he had resiled from the pursuer's oath.

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1628. *March 13.* ALEXANDER KING, Advocate, *against* SIR WILLIAM BALLANDEAN.

IN a contract betwixt Livingstoun Lady Burghtoune, for herself, and as tutrix to Sir James Ballandean, her son, the said Sir James, with her consent, on the one part, and Master Alexander King, Advocate, on the other part;—the said lady obliges herself, during her lifetime, and, after her decease, the said Sir James and his heirs, oblige them, to pay an annualrent; and, in the clause of requisition, she obliged her, and the said Sir James and his heirs, in case they be required, to redeem the said annualrent, by payment of the principal sum and byruns. The said Sir James deceases. His son, Sir William, being pursued as heir to his father, after lawful requisition, to pay the principal sum and byruns; alleged, that his father and his heirs were obliged to no more but for the half, in respect that he and his mother were both bound, and not conjunctly and severally. The Lords found him bound for the hail! after his mother's decease, in respect his mother did only oblige herself during her lifetime; and Sir James was bound, he and his heirs.

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