

1628. *July 2.* PATERSON *against* HELEN SKARLETT.

AN infeftment of an annualrent exceeding the mails and duties of the tenement, cannot stay the removing of the tenant at the heritor's instance.

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1628. *July 3.* JOHN SMITH *against* ——— SHORT.

IN an action pursued by one John Smith, who had arrested certain goods and gear, *viz.* salt and trees, in Dunbar, pertaining to John Davie, burghess of Edinburgh, to have the said arrested goods forthcoming,—compears Short for his interest, and alleges, He was made assignee to the said arrested goods long before the arrestment by the said John Davie's wife, who had a factory of him, to crave in his debts, and pursue for them, and give discharges, and generally to do all his other necessary affairs, as he were present himself; by the which she had power to make the said assignation. The maker of the arrestment alleges, That the factory could not be extended by the general clause, farther nor the particulars expressed bear. The obtainer of the assignation alleged, In respect he was a lawful creditor, which he took in hand to prove, she might, by the factory, either have made him payment of his just debt, or assigned him to such goods and gear for payment thereof. Which the Lords sustained, for so much just debt as the assignee could prove was truly addebted to him.

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1628. *July 4.* HAMILTON *against* GUTHRIE.

It is not leisom to take more annualrent nor L.10, or five bolls of victual, for L.100,—James VI, Par. 11, cap. 52; Par. 14, cap. 222; Par. 15, cap. 247.

*Nota.*—This last act is not extended to proper wadsets.

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1628. *July 4.* The LAIRD of SAUCHIE *against* His TENANT.

THE Laird of Sauchie pursues one of his tenants for removing: The defender excepts upon a tack. To the which it was replied, That the tack was null, by reason of an irritant clause therein contained, in case the duty was unpaid. And so it is that a year's duty was resting unpaid. It was duplied by the defender, That this failyie was not declared. The Lords found, It behoved to bide a declarator, notwithstanding of the clause contained in the tack, that it should be null but any declarator.

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