

1633. July 30. LAIRD LESLIE *against* The LADY WARDES.

THAT a wife is *præposita negotiis mariti*, cannot be proven but by writ or oath of her husband.

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1633. November 19. The LAIRD of BALMAINE *against* The LAIRD of LAURESTOUNE.

THE Laird of Laurestone, minor, being charged, by the Laird of Balmaine, for payment of a certain sum of money, wherein his father and others were cautioners for the Laird of Donypace; and his lands likewise being denounced to be comprised for this debt, he craves a suspension *super cautione juratoria*. It was alleged by his party, That, if a suspension were granted, that the same should not hinder the comprising to go on, and required this declaration. The most part of the Lords granted the suspension with this declaration only, That seeing the superior was, by this suspension, hindered to proceed with his comprising, till the suspension were discussed, yet his diligence should be respected, as no other creditor should be preferred to him, albeit he were put to a new denunciation. In the meantime, many of the Lords granted the suspension, but thought the comprising should not be hindered by this suspension; but they that were of this opinion did lose by one vote.

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1633. November 27. RAMSAY *against* DEMPERSOUN.

ALBEIT, before the commissaries, an executor may not assign any part of the defunct's debts to one of the defunct's creditors, before sentence be recovered against the defunct's debtors, establishing the debt in the executor's person, and thereafter the executors may assign or discharge as they please. Notwithstanding, an executor having constituted one of the defunct's creditors factor, *in rem suam*, to a debt owing to the defunct, and the factor having pursued before the commissary of St Andrew's, it was alleged by the defender, That no process could be granted at the factor's instance, whose factory was equivalent to an assignation; because the executor's cedent had not obtained the debt, established in his own person, by decret. To the which it was answered, That the factor, being a creditor, might pursue in the executor's name. Which exception being repelled by the commissary, the defender raised advocation upon iniquity, and the same being disputed before the Lords, they remitted the cause to the commissary, and ordained the executor to concur with the factor in pursuit of the action.

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