

1634. *July 18.* AGNES RICHARDSON (OF RIECHIESON) *against* HALBERT MAXWELL OF FREIRCARSE.

AGNES Richardson obtained decret, before the commissary of Dumfries, against Halbert Maxwell of Freircarse, decerning him to make payment to her of £80, for the which she was cautioner for Halbert's son, and whereof he promised to relieve her. The decret is given upon Halbert's contumacy in not compearing to give his oath; whereupon the commissary took the pursuer's oath. This decret is suspended by Halbert upon nullity, as given by the commissary upon a civil cause exceeding the sum of £40, contrary to the commissary's injunctions. The Lords found the letters orderly proceeded; because they had been in use to allow commissaries' decreets given upon 1000 merks; and this being a poor widow, they would not put her to a new process for a matter exceeding the custom but 40 merks.

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1634. *July 25.* The LAIRD of RENTON *against* The LADY HUNDSWOOD.

THERE is a bond by the Laird of Rentone to John Stewart, Francis Stewart, Robert Douglass, and the Goodman of Morestoune, whereby Rentone is obliged to them, for a tack set to him of the teinds of Flemyngtoun, to pay to the fore-said persons, having best right, the sum of 500 merks yearly; and farther, obliges him to set, to the Lady Hundswood, her teind during her lifetime, for £100 yearly. This bond is registrate; and, within half a year after the registration, the Laird of Rentone obtains a discharge of his bond and hail contents thereof, from Robert Douglas, Francis and John Stewarts; but Morestoune was at that time deceased, and did not consent to the discharge. Rentone pursues the Lady Hundswood for the wrongous intromission with the teinds. She defends for herself, upon the clause contained in the registrate bond. To the which it was replied, That this bond would not defend her:—*1mo*, It was not granted to her. *2do*, It was discharged by the persons to whom it was granted. Duplied, The bond being registrate, became her evident, in so far as it concerned the teinds therein mentioned. *2do*, A clause, being conceived in favours of a third party, either in bond or contract, cannot be discharged but by consent of the third party. *3tio*, Morestoune consented not to the discharge, who was one of the parties to whom the bond was granted. The Lords found the exception and duply relevant.

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1634. *November 12.* A. B. *against* JOHN CUTHBERT, BAILIE OF INVERNESS.

A. G. pursues James Cuthbert, bailie of Inverness, for having committed A. B. to ward, at the pursuer's instance, by letters of caption for the sum of £95: Suffered him to escape; and, therefore, convened the said James Cuthbert for the

debt. It was alleged for the defender, That he cannot be pursued for the debt ;  
*1mo.* Because he committed the debtor to ward conform to the caption, there to  
 remain upon his own expenses ; and he offers him to prove, that the debtor re-  
 mained in ward till he had no means to sustain himself. *2do.* He offered him  
 to prove, that the debtor blew up the lock of the tolbooth-door with quicksilver.  
*3tio.* That he ought to be assoilyied ; because he offers him to prove, that ———  
 Bishop, who was conjunct bailie with him for the time, was the outputter of the  
 rebel ; for whose deeds he ought not to be answerable, especially seeing the said  
 bailie was of equal power with him, and is now become bankrupt. To the  
 which it was replied, That, although the rebel was poor, yet the bailie had no  
 power by his authority to put him to liberty, but should have caused the rebel  
 to mean himself to the Lords, that they might have taken order for his enter-  
 tainment. To the *second*, It was not relevant, seeing the defender used no dili-  
 gence for apprehending the rebel again, after he had escaped. To the *third*, It  
 was lawful for him to pursue either the whole bailies, or any one of them that  
 was most responsal ; because they are *conjunctim in officio* ; and, if his colleague  
 be unresponsal, the other bailie, pursued, may seek his relief off the town, for  
 choosing an unresponsal bailie. The Lords repelled the haill allegances, in re-  
 spect of the reply.

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1635 ; [or 1632.] *January 17.* NINIAN MILLER [OF WALLACE] *against* GAVIN  
 LINDSAY.

IF a relict be confirmed executrix to her spouse, and recover decreets against  
 her umquhile husband's debtors, and thereafter be denounced rebel, and her es-  
 cheat be disposed to a donatar ; this gift of escheat can give the donatar no right  
 in prejudice of her husband's creditors, nor in prejudice of the defunct's bairns ;  
 but allenarly gives him right to that part which may fall to the relict by her hus-  
 band's decease.

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1635. *January 29.* WILLIAM KER *against* CRISTOPHER KNOWS.

ALBEIT heritable bonds be not arrestable, yet, if the sums contained in he-  
 ritable bonds be arrested before the term of payment, the arrestment is good ;  
 and the debtors may be pursued to make the sums forthcoming.

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1635. *January 29.* SIR JOHN M'KENZIE *against* The LAIRD of BALNAGON  
 and His VASSALS.

A COMPRISING cannot be taken away by way of exception, except the nullity  
 were contained in the body of the comprising.

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