

1628. *March 25.* NISBET *against* HUME.

IN a suspension betwixt Nisbet *against* Hume, a good-dame being obliged to pay to her oye, and to her husband, in her contract of marriage, the sum of 2000 merks, to be employed upon land, or annual-rent, or otherwise, at the sight of the father to the husband, and of the good-dame contractor for the tocher, and by their advice, (thir were the very words of the contract; for she was obliged to pay the said sum in tocher to the husband, and to his wife, to be employed, as said is, by the advice of the father to the husband, and of the good-dame to the wife;)—the Lords interpreted the contract to this sense, that the wife should have the liferent of this sum; albeit by the contract she was provided to a sufficient conjunct-fee, by the husband and his father; and albeit the good-dame being now deceased, that the father to the husband being yet living, dissassented; and the wife should have a liferent of that sum; without whose advice and consent, it was alleged by the husband's heir, (the husband's self being also now deceased,) that it was provided, in the contract, that the sum should not be employed; and he refusing to give advice thereto, the heir alleged, that the relict ought not to have it; specially seeing he also alleged, that the relict had the whole means pertaining to her husband, and that his heir had nothing.

*Act.* Mr Robert M'Gill. *Alt.* Craig. Hay, Clerk.

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1628. *March 25.* JAMES HUME *against* HUME and JUSTICE.

IN a suspension, betwixt Mr James Hume, minister at Dunbar, *against* Hume and Justice; the said Mr James being charged to relieve the heir of him, whom he was bound to relieve by his bond, anent the payment of a sum of money;—the Lords found, that, albeit the said Mr James was obliged only to relieve the party therein expressed, and made no mention to relieve his heirs, executors, or assignees, yet that bond should be effectual to his heirs, or any made assignee by the heirs, for producing of action, or execution against him, for their relief; seeing the bond of relief, *per expressum*, excluded not the heirs, executors, or assignees.

*Act.* ———. *Alt.* Belshes. Gibson, Clerk. *Vid.* 14th July 1629, L. Wardes; 6th February 1630, Muir.

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1628. *June 27.* GORDON *against* LAIRD of MELDRUM.

GORDON *against* L. Meldrum. The executors of a wife convening the executors to the husband of that wife, for payment of the wife's part contained in the testament, which was given up and confirmed to pertain to her and her husband the time of her decease, she deceasing before her husband;—the defenders alleging that defalcation ought to be made of the debts owing by her husband at the time of her decease, which the executors had paid sensine;—the Lords