

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

found this defalcation reasonable, and allowed the said payment; and found that the executors needed not to abide any sentence for the said debts to have been obtained by the defunct's creditors against them, but that they might have paid the same without sentence, they proving the debts to have been truly owing. And albeit there had been no payment, nor yet sentence, yet they found the defalcation relevant, bearing that the defunct was owing such particular debts, which being proven, the same ought to be taken off the gear, before the relict or her executors could claim any of the gear, for the relict's portion thereof.

*Act. Baird. Alt. Burnet, major. Gibson, Clerk.*

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1628. *July 9.*

LAUDER *against* JAMES MOWAT.

IN a suspension, Lauder *against* James Mowat, the said James being sheriff-clerk of Berwick, was charged by the said Lauder to extract a decret obtained in the court of the sheriffdom; and the clerk suspending upon this reason, that there was never such a decret, and producing the process to verify the same, no minute of any sentence was to be found in any part of the process; and the charger producing the Laird of Eistnisbet, who was sheriff for the time, his letter to verify that he had pronounced that decret, and which letter bore the same;—the Lords, notwithstanding of the sheriff's writ propoiting that there was a decret pronounced and given by him, suspended the letters *simpliciter*, in respect of the said process, which had no such warrant, and that the clerk in his office ought to have greater faith with the process than the assertion of the judge, *cui non creditur nisi quantum constat ex actis*:

*Act. Dunlop. Alt. Mowat. Hay, Clerk.*

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1628. *December 10.* The LAIRD of LEY *against* The MINISTER of LANARK.

THE Laird of Ley, having presented one to the preceptory of the hospital of St Leonard's, who, seeking letters conform to that provision and gift given to him by the Laird of Ley, as patron of that hospital; and the minister of Lanark compearing and alleging, that he was provided to the said preceptory by the king's majesty, and had obtained thereupon letters conform, by virtue whereof he was in possession; likeas his predecessor was presented by the king, and by virtue thereof he was also in possession, whereby it was evident that the right to present was only proper to the king; and they being so in possession, no letters conform ought to be granted upon the Laird of Ley's gift:—this allegiance was repelled against this summons, craving letters conform: without prejudice always of the defender's right thereupon; upon the validity whereof, or of the pursuer's right, the Lords found it not proper to dispute in this process and action of letters conform; but reserved the same to be tried by suspension or double poinding, or in any other lawful pursuit, *prout de jure*, whereto this decret should not be prejudicial.