

ment, during the time of her separation from her husband; Mr David Aytone, who had lent to her, before her separation, 300 merks upon her bond, arrested in her husband's hands a term's duty. Her husband consigns the term's duty, and suspends upon double pointing. The Lady alleges, Her [allowance] being appointed for her aliment was not arrestable, especially for the said sum of 300 merks, because it was borrowed by her before the separation, and employed upon the furnishing of her house; and, in that respect, Mr David should pursue her husband for the same. The Lords ordained the Lady to be answered for the consigned money, and Mr David to pursue her husband; and ordained the Lady to find caution that she should pay the said Mr David, in case it were so found that her husband were not his debtor.

Page 265.

1629. *February 17.* ALEXANDER INGLES *against* LADY DUMFERMLING.

LETTERS conform, may be given upon pensions granted by secular men, notwithstanding it was alleged, That such letters conform could only be granted by beneficed persons, conform to the Act Ja. VI, Par. 12, cap. 14.

Page 165.

1629. *February 20.* TYRIE *against* The VISCOUNT of STORMONTH.

The Viscount of Stormonth buys, from one Chalmer, his lands of Drumlothie. In the contract of the alienation, the price of the lands is discharged; but the Viscount gives, to the said Chalmer, (he being in life,) a bond to content and pay to him, at Whitsunday 1619, the sum of 3000 merks; and failing thereof, to infest the said Chalmer of an annualrent of 300 merks, in liferent, and his son in fee. The Viscount disposes the right of the said land to Mr James Ratray, and takes him obliged to pay the sum contained in the bond, and to relieve him thereof. Mr James obtains a discharge from the said Chalmer, who had annuiled the lands in December 1619. After the death of the said Chalmer and his son, his daughter serves herself general heir to her brother, in whose favours the clause of the said contract was conceived, whereby the Viscount was obliged, in case the sum was not paid to Chalmer at Whitsunday 1619, that he should infest him in liferent, and his son in fee, in an annualrent of 300 merks, as said is. The said daughter makes Tyrie, second son to Drumkilbo, assignee to her right of the bond, who seeks the bond to be transferred against the Viscount. It was alleged for the Viscount, That his assignee, Mr James Ratray, had made payment to the father, who had power to receive the same, during his lifetime, and had reported his discharge thereupon, produced in process. It was replied, That the father had no power, after the term of Whitsunday 1619, to discharge

the sum; because of the destination thereof contained in the bond, whereby the father was ordained to be infeft but in liferent, and the son in fee. It was duplied, That, so long as the infeftment was not granted, and the obligation consisted *in nudis finibus*, the father had power to dispoise upon the money as he pleased, it being the price of his own lands wherein his son was not infeft. The Lords found the exception and duply relevant and proven.

Page 16.

1629. February 20. ELIZABETH WHYTE, and RIPPATH, her Husband, *against* JAMES DOUGLAS'S HEIRS.

ELIZABETH Whyte, relict of umquhile James Douglas, clerk of Duns, and Rippath, her spouse, for his interest, pursue her first husband's heir, to provide her to the annualrents of the heritable bonds during her lifetime, which were made to his father after the marriage, some of them bearing the annualrent to be paid to him and his heirs, as well infeft as not infeft, but bearing no clause whereby the debtor was bound to infeft the creditor's other bonds, bearing only to pay annualrent, aye and while the principal sum be paid. The reason of the pursuit was one clause in the contract of marriage, whereby umquhile James Douglas was obliged to infeft his future spouse and himself in all lands and annualrents that he shall happen to acquire or conquesche during the marriage. It was excepted for the heir, That the clause of the contract could not oblige the contractor to provide her to no other annualrents but those wherein he was either infeft, or, at the farthest, in these bonds, in which the debtors were obliged to infeft him. The Lords found, That the heir should provide [her,] *habili modo*, to all the foresaid heritable bonds which bore annualrent to be paid to him. *Ratio*:—if they had not been heritable, she would have fallen into the third of the sums contained in them.

Page 264.

1629. February 26. DOUGLAS *against* M^cMICHELL.

A BOND for payment of a certain sum of money at a certain term, with the annualrent thereof, and, failing in payment thereof at the said term, to pay a penalty; and, after the said term, to pay annualrent, aye and while the principal sum be paid. Before the term of payment, the creditor departs this life. *Queritur*, Whether this bond be heritable or moveable? The Lords found the bond moveable.

Page 16.
