different from reponing against decreets, where the parties are holden as confessed, because of not compearance to depone; against which the Lords do often repone, when the parties have lawful defences.

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1669. *July* 22. LEITH *against* The EARL of MARSHALL.

IN the foresaid action, Leith, upon his right *jure mariti*, for the sum upon the wadset, being required, as said is,—it was ALLEGED, That the requisition could not make the sum moveable; because, by the pursuer's own charter produced, the clause of requisition therein narrated was not *ad hunc effectum* to make the Earl of Marshall personally liable, so that he might be charged with horning for payment; but in case of requisition, and not payment, Elizabeth Keith, spouse of the said Leith, was only to have possession of the lands and not to be redeemed until she should be paid of 12,000 merks, which was 2000 merks more than her portion.

The Lords found, That the requisition contained in the charter granted by the Earl of Marshall, being only in the terms foresaid, that the requiring of the sum did not make the same moveable, so as to give right to the husband *jure mariti*; but declared, that the contract, to which the charter was relative, should be produced, to the effect they might see, if the Earl of Marshall was personally liable upon requisition, and that execution might be raised against him.

In this process, these points were likewise debated; 1*st*, Whether or not the husband, after marriage and requisition, having continued to possess the lands, and to intromit with the maills and duties, and hold courts, it was a passing from the requisition, so that he could never recur thereto, and crave the sum as being moveable? 2*d*, If both the wife and husband, having disponed the right of wadset to the husband's brother, they could recur to the clause of requisition, and crave the sum as moveable.

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1669. *July* 24. CHILDREN of SHORSWOOD *against* MAGDALEN SHORSWOOD.

IN an exhibition and delivery, pursued by the children of the brother and sister of Thomas Shorswood, against Magdalen, another sister, of an assignation to an heritable bond granted by Cunningham-head to the defunct: It being ALLEGED for the defender, That she, being heir-portioner, was not obliged to deliver the same; seeing it was never delivered by the defunct himself; without which the pursuers could have no right, the bond being heritable:—It was