

would do, to get the benefit of the astriction, by sustaining and fulfilling the decret-arbitral. *Vol. II. Page 32.*

1699. *January 6.* MARION MAXWEL, Lady Rosyth, *against* DRUMMOND of INVERMAY.

I REPORTED Dame Marion Maxwel, Lady Rosyth, against Drummond of Invermay, for an alimnt of twenty chalders of victual, conform to the provision of her contract of marriage, during the dependance of the process anent the extent of her jointure-lands.

The Lords found Invermay could not be personally liable for the same, unless he had intromitted; but granted warrant to the lady to uplift the rents from the tenants of these roums wherein she stood infeft, not exceeding twenty chalders of victual, during the dependance of the other process.

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1699. *January 10.* SARAH JOHNSTON *against* The EARL of ANNANDALE.

SARAH Johnston, having right to 2500 merks of a wadset granted by the Earl of Annandale's father to Lockerby, pursues a transferring of the said contract against this Earl *passivè*, as representing the granter; and it being called summarily, it was OBJECTED,—It must abide the course of the roll. ANSWERED,—By an Act of Sederunt in July 1688, transferrings are exemed from the roll. REPLIED,—These are transferrings of depending processes, but not of registrate writs, as this is. DUPLIED,—The Act makes no distinction; *et ubi lex non distinguit, nec nos.*

The Lords considered such transferrings, or registration, were now little in observance; therefore ordered trial to be taken what has been the custom when such actions were insisted in,—whether they went to a roll; the ordinary process now in such cases being a summons on the passive titles.

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1699. *January 10.* LADY SEMPLE *against* COLONEL CUNINGHAM.

THE Lady Semple pursued reduction and improbation of a mutual tailyie, by way of indentures, past betwixt the deceased Brigadier Richard Cunningham, her last husband, and Colonel Cunningham, his brother; in which action, she not insisting when it was called, protestation was granted for not insisting. Thereafter a bill was given in for the lady, craving it might be stopped, and she allowed to insist. Which being ordered to be seen by the Colonel, he was content to stop his protestation, but craved a commission to London and Dublin to examine witnesses on his brother's subscription. For preventing whereof the