

who collude with the heir, and suffer decret to pass against them in defraud of other creditors ;—not respected.

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1629. *February.* ————— *against* —————.

THE gift of a husband's liferent, disponed by a superior, cannot be extended to the lands which he only bruiks by his wife, *jure mariti* ; but the duty of these lands falls under escheat, and must yearly be disponed, so long as the husband remains rebel ; for the husband is not vassal to the superior of these lands, while his wife holds of the superior, although he possess the same *jure mariti*.

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1628. *February 14 ; and 1629, February 4.* The Young LADY AITOUNE *against* The RELICT of ALEXANDER HUME.

THE young Lady Aitoune, being infest with her husband, by the old Laird of Aitoune, in the lands of —————, conform to her contract of marriage, to be holden of the superior ;—the said Laird Aitoune afterwards dispones the land to Mr Alexander Hume, to be holden of the Laird of Aitoune, and he is put in possession thereof. In this contract of alienation, the disponers are obliged to obtain the consent of the young lady to the alienation ; and, for the security thereof, give a bond of 4000 merks. After the alienation, and before the death of the young Laird of Aitoune, the young lady's conjunct fee is confirmed by the superior ; and, after his decease, the young lady pursues for the mails and duties of the land : Compears the relict of Mr Alexander Hume, who had served herself to a terce of the said lands, and alleged she ought to be preferred, because her husband was infest in the lands by the old and young Lairds of Aitoune, before the young lady's infestment was made perfect by the superior's confirmation. It was answered, That the confirmation being passed before her husband's decease, it must be drawn back to her charter ; and no base infestment, although clad with possession in her husband's time, which she could not impede so long as he lived, could prejudge her of her liferent ; in respect, in the contract of alienation, and in the bond, they take the Laird, her husband, obliged to obtain her consent. The Lords repelled the exception.—14th *February 1628, and 4th February 1629.*

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1628. *January 16 ; and 1629, February 7.* DALMAHOY *against* BROWN.

A WIFE, being executrix to her husband, after his decease, marries another

husband. After her decease, the bairns of the first marriage pursue the second husband, as universal intromitter with their mother's, his wife's, goods and gear. The Lords would not sustain this form of pursuit against the husband, in respect he was dominus, and might very lawfully intromit without danger. Neither could his intromission be counted vicious.—16th January 1628, and 7th February 1629.

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1629. February 9. STEWART *against* WATSON.

If one pursue action as heir, and, for instructing himself to be heir, alleges, That the same party, defender, obtained a decret against him, as lawfully charged to enter heir;—the Lords sustain not this pursuit, except he produce his retour, or seasine upon a precept of *clare constat*.

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1629. February 10. GRAHAM and OLIPHANT *against* FINLAY'S BAIRNS.

GRAHAM, relict of umquhile Finlay, her first husband, and spouse to Oliphant, her second husband, had a clause in her first contract of marriage, whereby her husband was obliged to infest himself, and her and the heirs to be gotten betwixt them, in all lands, annualrents, tacks, rouns, possessions, or sums of money, that he shall happen to conquesch during his lifetime. Notwithstanding of the said contract, her umquhile spouse laid out certain sums of money, in some of his bairns' names. After his decease, she and her second husband pursue the bairns for her liferent of the said sums provided to them, being her husband's conquest, and so provided to her by the said contract of marriage; but the bairns being absolved, she intents a new action against her eldest son, being heir, to hear and see him decerned to provide to her as much annualrent, during her lifetime, as his father had provided his other bairns, seeing it was found that she could have no action against the said bairns for the same. It was answered, That the clause in the said contract could not be so strictly interpreted, that thereby a man should be debarred from making provision to his bairns out of a part of his conquest; and the wife being sufficiently provided, according to her estate and her husband's means, could have no action against the heir for providing to her as much as was disponed to the rest of the bairns. And it was farther alleged, This woman, being widow, with her consent caused fill up the bairns' names in the bonds, which were left blank, in her keeping, by her umquhile husband. Which two allegiances, being conjoined, the Lords found relevant.

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