

1629. *February 27.* COCHRAN *against* DAWLING.

IN this action, whereof mention is made, 13th February 1629, it was found that the heirs were bound to make the employment to the liferenter profitable to her in all time to come, during her lifetime, at the proportion of ten for the hundred, and at no less profit; albeit the heirs should not receive so much profit themselves, and albeit the money in the country should be lent for less profit; and albeit they were only obliged, in the contract, to employ the money as commodiously as they might get the same; which they alleged would not bind them to pay the profit, which could not possibly be had. Which was repelled; but it was found that they might either employ it upon land, as said is, or else pay, within 40 days after each term, ten for the hundred, in the heir's option, which payment should supply the infestment.

Page 430.

1629. *March 6.* The BISHOP of the ISLES *against* His VASSALS.

IN an improbation, a defender being summoned at his dwelling-place, which was the principal house of his lands, wherefrom he was styled; and he compearing by his procurators, and alleging no process upon that citation, seeing then he had no remaining, nor dwelt there: but by the contrary it was offered to be proven, that the time of the citation, and divers months before, and by the space of a year since that time, he dwelt and remained at the schools in Leith, being a minor, and brought up there: This allegiance was repelled, and the execution sustained, but prejudice to reduce thereon, *prout de jure*.

Act. Advocatus and Aiton. *Alt.* Nicolson and Stuart. Gibson, *Clerk.*
Vid. 2d July 1630, E. Hume.

Page 434.

1629. *March 12.* MERSHALL *against* L. DRUMKILBO.

ONE provided to a chaplainry in the College-kirk of Dunkell, and having thereon obtained letters conform, and charged for an annual-rent of ten pounds out of some lands, as due to the said chaplainry, and to the last chaplain, by whose decease the charger was provided,—having obtained decret before the commissaries of Dunkell, against the heritors of the same lands, for payment of the said annual-rent for divers years, as addebted to him, and he having thereupon poynded the tenants, and received payment;—thir charges being suspended by the heritor, it was found that the decret foresaid, obtained before the commissary of Dunkell, and the poynding conform thereto, by the said late chaplain, could not be sustained as sufficient grounds to astrict the heritor to burden his lands with the servitude of this annual-rent; except there were either a mortification produced, to show where this annual-rent was mortified by the heritor, to that chaplainry, or else that the chaplain had been in possession

thereof, either before the reformation of the religion, divers years, or thirty years since; and no otherwise. And they respected not the said decret and three years' possession therein contained, and pointing therefore.

Act. Fletcher. *Alt.* Nicolson. Hay, *Clerk.* *Vid.* 17th March 1629, Yeaman *against* Stuart.

Page 436.

1629. *March* 12. CUNNINGHAME *against* The SHERIFF OF STIRLING'S DEPUTES.

THE Sheriff-depute being charged to take a rebel, who suspending, on obedience and diligence done by him in searching and seeking him, and that he could not be found, as instruments produced bore; and the charger replying, that, since the instrument, the said depute had been in company with the rebel divers times within the place of his jurisdiction, where he had at that time power to take the rebel;—this allegiance was sustained, being proven to infer sentence against the depute for not taking the rebel; for no further was sought by the process; for payment of the sum was not sought therein: and it was not found needful that the charges of the caption should have been left with the depute, or delivered to him for his warrant of taking the rebel at the times fore-said of his being with the rebel; neither was the want of these charges found any cause whereby the depute should be excused to take him, he having received a copy subscribed by the messenger the time of his first charge.

Vid. ult. and 4th July 1628, Rachelet, and the cases there cited; and 12th June 1630, Mr Rodger Mowat; 13th July 1630, Hay *against* E. Marshal.

Page 437.

1629. *June* 19. SAMUEL GRAY *against* ———.

MR Samuel Gray, having charged his debtor for payment of a sum, who suspending, and consigning the same,—in the suspension compeared the mother to his wife, and desired that the money should be employed to her daughter in liferent, for implement of the contract of marriage, *pro tanto*, made betwixt the daughter and the said Mr Samuel, whereby he was obliged to provide her to a yearly annual-rent greater than the annual-rent of the sum consigned, to be uplifted out of his lands; which lands, seeing he had sold the same, she, as person contractor in the contract of marriage, had interest to crave of the Lords, to be fulfilled to her daughter by the employment of this money so far as it might extend, in place of the annual-rent out of the lands. This being considered by the Lords, they found it reasonable; and albeit neither the good-mother nor the daughter his spouse were parties, nor called in this suspension,—yet the Lords found that this money should be employed to the woman in liferent; albeit the particular sum was not mentioned in the contract, and albeit the daughter also compeared, and declared that she craved not that employment to be made by her husband, but consented that he should take up the money, and use the same at his pleasure. Which was not respected by the Lords.