

1629. *March 18.* MERSHALL *against* ———.

AN annualrent [being] claimed by a beneficed person, out of a man's lands, where he has no mortification to instruct his pursuit, [he] must prove, at the least, thirty years' possession of the same paid to him or his predecessors, titulars of the said benefice, conform to a statute made by the Lords, and inserted in the books of sederunt, in December 1612: According whereto it was decided, the 18th of March 1629, betwixt Mershall, chaplain of a chaplainry of Dunkeld, called St Ann, for an annualrent of £12, acclaimed out of the lands of Loch-antie, to pertain to the said chaplainry.

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1629. *March 18.* NAIRN *against* WILLIAM MILLER.

BARBARA Thomson, relict and administratrix with her husband's goods and gear, is pursued by one Nairne, before the commissary, for a debt owing to him by the defunct, and he obtains decret against her; as also, another creditor, William Miller, pursues her for another debt owing by her husband, and for house-mails owing by him before his decease, before the bailies of Edinburgh; and he obtains decret against her, as having arrested the household gear wherewith she intromitted, to make the arrested goods forthcoming for the debt, and likewise for the house-mail. She, having intromitted with no more but the plenishing of the house, suspends upon double pouding. It was alleged by Nairn, That he ought to be preferred, because he had obtained decret before the Commissaries, who were the only competent judges in a matter of this kind; and that William Miller's decret ought not to be respected, as given by the bailies, who were not competent judges to consistorial causes; as also, the decret to make the defunct's gear forthcoming, by virtue of an arrestment made before any decret was obtained, at his instance, against some persons representing the defunct, was null. The Lords found this decret was null, in so far as it concerned the making arrested goods forthcoming; but sustained the same for the house-mails.

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1629. *March 18.* MACILLVARR *against* M'RENTONE.

AN allegiance made against a bond or disposition, that the same is null, because the party maker of the bond or disposition was interdicted;—the Lords would not receive the nullity by way of exception or reply; but ordained the proponer of the allegiance to use reduction.

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