

1631. *June 10.*PEEBLES *contra* SCOT.

No 3.

The King's
customs a pri-
vileged debt.

THE creditor Peebles for his debt owing by one Pecbles deceased, and the King's customer for the impost of wine, owing by the said defunct, which the defunct entered, as pertaining to three persons named particularly in the ticket of entry, and to himself as a merchant thereof also, as the entry subscribed by the defunct reported, in a double pointing, contending for preference in the debtor's goods; it was found, that the buyer of these wines from the defunct, the price whereof was resting unpayed by the buyer, might be sought by the King's officers, for satisfying of the custom, wherein they were preferred to the creditors, who had arrested the same in the buyer's hands, except that it might be proven, that the said custom had been paid; and that the King by his privilege might either seek his custom from the merchant, or any other intromitters, who were full handed with the wares, and had not paid therefor before to the merchant; and it was not presumed that the customs were paid, except the same were shown; neither is the giving of security for payment, which useth to be done at the time of the entry, derogatory, but that the King's officers may either take him to that security, or to the merchant, or to the wares, where they are extant unpaid for; and in respect of the entry of the tenor foresaid, made of so many wines, whereof he gave himself up for one of four merchants, owners thereof, it was found, being questioned for what proportion of the wines and customs thereof, the defunct could be answerable, that he should be answerable at least for the fourth part of the whole customs of that quantity entered, except that the party could show that he was partner of less, and could qualify the same; but here the party being dead, and nothing instructed otherways, he was found answerable by his ticket for the fourth part, in respect he confessed therein, that he was one of the four merchants.

Act. *Advocatus & Lawtie.*Alt. *Mowat.*Clerk, *Scot.**Fol. Dic. v. 2. p. 177. Durie, p. 589.*1631. *July 11.*LADY YESTER *against* KERR.

No 4.

Found in cor-
formity with
Cranston a-
gainst Home,
No. 1,
p. 11823.
See No 11.
p. 11833.

THE Lady Yester, after the decease of her last husband, the Master of Jedburgh, pursues removing against Kerr, frae the lands wherein the Lady was infest, conform to the contract of marriage. It was excepted by the defender, that he could not be decerned to remove, because by the contract betwixt him and Jedburgh, the said lands were disposed to him before the contract of marriage betwixt the Lady Yester and her spouse, the Master of Jedburgh, and, by virtue of the said contract, he was in possession; likeas, he stands now infest in the lands; albeit his infestment was posterior to the pursuer's infestment, yet the