

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. *Morat.*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

same depended upon a cause, viz. the contract of alienation, whilk was prior to the pursuer's contract of marriage, and infestment following thereupon, and so ought to be drawn back to its own cause, and should defend him in this judgment possessory. It was *replied*, That because the contract of alienation was no real right to debar the pursuer frae enjoying her infestment, proceeding upon her contract of marriage, which was so favourable, that by the law and practice of this realm, wives were not holden to reduce infestments, given by their husbands, in prejudice of the infestments granted conform to the contract of marriage, although clad with possession; but immediately after their husband's decease, they are in use, upon their right, to pursue either upon removing, or for mails and duties of the lands wherein they are infest, conform to their contract of marriage, and need not to pursue for reduction of rights posterior to their infestment, although cald with possession. THE LORDS repelled the exception.

*Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 267.*

1631. July 22.

MACK *against* PARBON.

GEORGE MACK pursued — Parbon relict, and intromissatrix with umquhil Home, her husband's goods and gear, for a sum owing by her to the pursuer. She alleges, she cannot be pursued as intromissatrix, because she has confirmed herself executrix to her husband, as a creditor for the condition due to her by contract of marriage. It is replied, That this confirmation cannot prejudice the pursuer, who had intented his summons long before the confirmation. It was duplied, That, notwithstanding of the pursuer's diligence, yet, in respect of her debt, she ought to be preferred to all others, her husband's creditors; whilk the LORDS found relevant.

*Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 258.*

1672. November 14.

WILLIAM SMEATON *against* The EXECUTORS of JAMES DUNLOP.

IN a suspension raised at Smeaton's instance against the Executors-Creditors of James Dunlop, upon this reason, that the decret was wrongously given against him for sums of money he had paid to the defunct's relict, who was a preferable creditor by her contract of marriage, as likewise decerned executor-creditor by the Commissaries; it was *answered*, That the said relict being only decerned but never confirmed, had no title in her person, and therefore decret was justly given at the charger's instance, who was not only decerned, but confirmed executor.

No 4.

No 5.  
Found again  
in conformity  
with Cranston  
against Home,  
No. 1,  
p. 11823.  
See No 11.  
p. 11833.

No 6.

Found as  
above.  
See No 1.  
p. 11833.