

about three hundred merks, could not be admitted as a part of the rental; because, by the contract of marriage, she being provided in conjunct-fee to the whole barony, had right to the kains and customs, by an attour, the constant rent due by the tenants; and the conversion of the said kains and customs, being only occasioned by the Earl's not living at the place of Esselmount, but at another house far distant; and the warrandice, bearing expressly the lands were worth seventy chalders of victual and one hundred merks, estimated as the price of a chalder,—it could not be the meaning of parties, neither did the words bear to accept of an hundred merks in place of kains and customs.

It was REPLIED, That the contract, giving no right to the Lady but to a life-rent of victual and money-rent, without making mention of kains and customs, and the same being converted and made in a constant rent, long before the contract of marriage, the Lady was bound to accept thereof.

The Lords did sustain the defence; and found, That the Earl was not obliged to make up the whole rental, besides the money paid for kains and customs, they being converted before the contract of marriage.

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1675. *November 13.*

KER *against* VEATCH.

IN a double pointing betwixt the said parties, as creditors to Sanderson, after Veatch was preferred to Peter Pallet, as to the sum of money contained in Sir George Maxwell's bond, who became debtor to Pallet in place of Colonel Stewart;—compearance was made for Ker, who ALLEGED, That he ought to be preferred to Veatch; because he had a back-bond from the common debtor, declaring, that a part of the debt due by Colonel Stewart did properly belong to him; and therefore could not fall under Sanderson's escheat, nor belong to Veatch as creditor.

It was ANSWERED, and ALLEGED for Veatch, That any such declaration or back-bond, being after Sanderson was denounced rebel, could not be respected; it being a voluntary deed, and did fall within the Act of Parliament 1621.

The Lords did, notwithstanding, prefer Ker; which seems inconsistent with their former interlocutor preferring Veatch to Pallet: seeing the back-bond and declaration was after Sanderson was denounced rebel; and was voluntary, as well as Pallet's assignation, which was found to fall within the Act of Parliament.

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1675. *November 26.* FORBES of COLLODINE *against* ROBERT ROSS, late Provost of Inverness, and ALEXANDER PATERSON.

IN a suspension of a decret, obtained at Cullodine's instance, against the said parties, before the commissary of Inverness; for payment of their proportion of the sum of £6,500, as charges and expenses waired out by him in two actions pursued before the Lords of Session, against the Town of Inverness, in a de-