

verity thereof to the oaths of the persons subscribers of the bond, who, being out of the country, the pursuer offered to find caution to restore the sum contained in the bond, in case the party reduce the same at any time thereafter, and to warrant the party who had the arrested goods in his hands, who was pursued to make the same forthcoming, at the hands of all other creditors. Which the Lords sustained.

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1629. *January 20.*      *ROSS against MR GEORGE BUTLER.*

IF a party be pursued by the donatar of a rebel's escheat, to make payment of a debt owing to the rebel, and the party alleges, that the rebel was owing to him as much, or any part, and desires that he might have retention or compensation allowed to him;—the Lords will not allow compensation in prejudice of the king and his donatar.

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1629. *January 21.*      *SWAN against RUNSIE.*

IF a suspension be produced, and the party refuse to dispute, the Lords can do no more but suspend until the charges be produced. Yet, in this case, they modify expenses.

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1629. *January 27.*      *ROBERT KERR against MR ALEXANDER HAMILTONE of KINGLASS.*

A DISPOSITION of certain lands, and of all goods, gear, and insight plenishing, *omnium bonorum*, for onerous causes, prior to a comprising of the person's liferent who made the disposition; by virtue of which disposition, she to whom it was made disposes her right to another person, who enters to the possession of the roun comprised before any warning was made by the comprising: the said disposition was preferred to the comprising.

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1629. *January 29.*      *NESBET against HUME.*

A DECREE, obtained at the instance of an apparent heir, against executors

who collude with the heir, and suffer decret to pass against them in defraud of other creditors ;—not respected.

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1629. *February.* ———— *against* ————.

THE gift of a husband's liferent, disponed by a superior, cannot be extended to the lands which he only bruiks by his wife, *jure mariti* ; but the duty of these lands falls under escheat, and must yearly be disponed, so long as the husband remains rebel ; for the husband is not vassal to the superior of these lands, while his wife holds of the superior, although he possess the same *jure mariti*.

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1628. *February 14 ; and 1629, February 4.* The Young LADY AITOUNE *against* The RELICT of ALEXANDER HUME.

THE young Lady Aitoune, being infest with her husband, by the old Laird of Aitoune, in the lands of ————, conform to her contract of marriage, to be holden of the superior ;—the said Laird Aitoune afterwards dispones the land to Mr Alexander Hume, to be holden of the Laird of Aitoune, and he is put in possession thereof. In this contract of alienation, the disponers are obliged to obtain the consent of the young lady to the alienation ; and, for the security thereof, give a bond of 4000 merks. After the alienation, and before the death of the young Laird of Aitoune, the young lady's conjunct fee is confirmed by the superior ; and, after his decease, the young lady pursues for the mails and duties of the land : Compears the relict of Mr Alexander Hume, who had served herself to a terce of the said lands, and alleged she ought to be preferred, because her husband was infest in the lands by the old and young Lairds of Aitoune, before the young lady's infestment was made perfect by the superior's confirmation. It was answered, That the confirmation being passed before her husband's decease, it must be drawn back to her charter ; and no base infestment, although clad with possession in her husband's time, which she could not impede so long as he lived, could prejudge her of her liferent ; in respect, in the contract of alienation, and in the bond, they take the Laird, her husband, obliged to obtain her consent. The Lords repelled the exception.—14th *February* 1628, and 4th *February* 1629.

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1628. *January 16 ; and 1629, February 7.* DALMAHOY *against* BROWN.

A WIFE, being executrix to her husband, after his decease, marries another