

of the right of the annual-rent to the father, he grants the right of the annual-rent lawfully redeemed by the heritor: after the decease of her father, the daughter and her husband pursuing to point the ground for that annual-rent, by virtue of the said sasine passed upon the father's resignation, and the defender opposing the father's renunciation and the father's giving of a greater sum to the daughter in tocher with her husband, who pursued;—the Lords repelled the allegiance, and sustained the pursuit; for the father being denuded of the heritable right of the annual-rent, with reservation only of his own liferent, it was found that he could not prejudice the heritor thereby: albeit the right made to his daughter was under reversion to himself of 40 shillings, the same not being redeemed by him: and albeit upon his death-bed he willed that right made to his daughter to be cancelled, which was not respected, not being *habilis modus*, and the contract of marriage, bearing the tocher-good, had neither relation to this annual-rent nor to any provision made by her father, but had relation to her portion fallen by her mother, which she discharged.

Gibson, *Clerk*.

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1630. *March 11.* THE LAIRD OF LOCHMABONY *against* ROLLOCK.

THE Lords having, *ex officio*, for their better information and trial of the cause betwixt the parties, ordained some witnesses to be examined, found, that albeit the said witnesses might be declined in law from being witnesses against the party who opposed to the receiving of them, yet that they ought to be received; but declared, that, in the advising of the cause, they would not only consider of their declaration, but also that they were such persons as in law were declinable.

Hay, *Clerk*.

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1630. *March 18.* The LAIRD OF HORSEBURGH *against* FRANK.

FRANK, upon his infetment, having obtained decret against the possessors of a tenement in Peebles, for payment of the mails thereof to him of the year 1627; in the which decret the Laird of Horseburgh compearing, and admitted for his interest, proponed defences, which were discussed, and sentence given, he compearing; and this decret being suspended upon double pointing against the obtainer and the Laird of Horseburgh, who proponed other defences, and produced other rights to the lands than these which were proponed and produced for him in that other process; and the other party, opposing his decret given against him, compearing;—the Lords found, in respect of the foresaid decret given against him compearing, at the which time the defences upon the right now produced were then competent, and were not then proponed; therefore being then competent, and omitted, that it ought not now to be received. Therefore repelled the same, and ordained the obtainer of the sentence to be answered and obeyed.