

yearly given to her, in place of the 500 merks decerned, 1200 merks yearly in all time coming, during her lifetime; for which sum they ordained the lady to have right sicklike as if that sum had been decerned by the sentence; and also, they ordained to be paid to her, for the space of a year which was expired since her husband's decease, 1000 pounds, by and attour 500 merks which she had gotten paid to her before. And this the Lords ordained to stand, as if it had been expressly decerned by the arbiters in their sentence.

*Act.* Stuart and Baird. *Alt.* Nicolson and Nairn. Hay, *Clerk.*

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1633. February 26. The LAIRD of CONHEATH *against* The LAIRD of EARLSTON.

MAXWEL of Conheath being made assignee to certain goods, by Katharin Glendinning, owner thereof, which were intromitted with by Gordon of Earlston, and for which he was pursued by the assignee; and he dying, *pendente lite*, the action was transferred in the heir of Earlston; who compearing, alleged that the cedent was at the horn before the making of the assignation, and he has obtained the gift of her escheat and declarator thereon; which, albeit it be after the assignation, yet the horning is anterior to the assignation; after which horning she could do nothing in prejudice of the fisk, which might derogate to the escheat. This exception was found relevant, and admitted to the defender's probation; whereby the donator was preferred to the assignee made before the escheat was gifted, seeing the cedent was at the horn when the assignation was made by her, at which time she could do no deed to prejudge the fisk. The act of litiscontestation in this cause is dated December 6, 1631, and it was decreet-ed February 23, 1633.

*Act.* Cunninghame. *Alt.* Nicolson and Mowat. Scot, *Clerk.* *Vid.* 2d February 1632, Lindsay; 6th December 1631, betwixt these parties.

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1633. July 20. LADY ROTHEMAY *against* JANET OGILVIE and GEORGE ABERNETHY.

THE Lady Rothemay, as infest in the lands of ——— in conjunct-fee, pursues Janet Ogilvie and George Abernethy her son, for the duty of the said lands divers years bypast; who alleging, that she bruiked by tolerance and right from her said son, who was apparent heir to Ogilvie his father, which father had a right of heritable infestment of wadset of these lands from the pursuer's husband's authors, before the right made to her umquhile husband; by virtue whereof her husband was in possession: and the lady replying that the defender, *viz.* the relict of the obtainer of the wadset, had taken tacks from the pursuer's husband, wherein she had obliged her to pay the duty now acclaimed; and albeit that tack was expired before the years now acclaimed, yet, seeing she bruiked *per tacitam relocationem*, she ought still