defender paying the ordinary maills and duties of the lands; and absolved them from violent profits.

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1633. *December* 18. MARQUIS of HAMILTON *against* ————.

WADSETS of property, without back-tack, ordained to pay two for ten, as well as other sums lent for annualrent, by land or wadset, with back-tack.

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1634. *January* 9. JAMES KNOWS *against* The EARL of MARR and THOMAS BRUCE.

THE Earl of Marr being addebted to Michael Elphistoun the sum of 7000 merks by two heritable bonds, which were apprised from the said Michael by James Knows, assignee constituted by two of Michael's creditors;—the Earl of Marr is pursued by the said James, appriser, to make the said sums forthcoming. In the action compears Thomas Bruce, provost of Stirling, for his interest, and alleges the said sum should be made forthcoming to him; because he was made assignee to the said sums by the said Michael, and his assignation intimated before any denunciation used by the compriser. To the which it was replied, That the assignation was null; because it was offered to be proven that, notwithstanding of the assignation, the cedent was in possession in uplifting the annualrent divers times after the date of the said pretended assignation, and that Thomas Bruce himself had taken a factory, since the said assignation, from the said Michael, and, as factor, had given discharges to the Earl of the annualrent, whereby he had passed from the assignation. To the which it was answered, That the assignee has given no discharges, as factor, after the intimation of his assignation; and what he did before cannot prejudge him, because his assignation was no perfect right before it was intimated, but, after the intimation, became perfect. To the which it was replied, That an acceptation of a factory annihilated the assignation and extinguished the same; and the posterior intimation could not make *non-ens* to revive. Which reply the Lords found relevant.

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1634. *February* 1. SIR PATRICK MURRAY of ELIBANK *against* MR WILLIAM OLIPHANT of KIRKHILL and JANET MAULD, his Spouse.

IN an action of removing pursued by Sir Patrick Murray of Elibank against Mr William Oliphant of Kirkhill and Janet Mauld, his spouse, he obtains decreet of removing from certain lands, wherein Mr William had infeft him. The said Janet, being divorced from the said Mr William, suspends, and alleges, That