

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 appraised 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 KIRK HILL 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 decret of removing from certain lands, wherein Mr William had infest him. The said Janet, being divorced from the said Mr William, suspends, and alleges, That

she cannot be removed from the lands of ———; because they are a part and pertinent of the mains of Uphall, wherein she stands infeft, by virtue of her contract of marriage, long before the pursuer's right. To the which it was answered, That her infeftment was only in the lands of Uphall, which is limited and specially designed, particularly by denomination of the proper names of the rouns, and particularly by the tenants by whom these lands were laboured for the time; and Ponflatt is neither mentioned in her infeftment, nor the name of any tenant that laboured the same designed in the seasine; but, on the contrary, the pursuer is infeft in the same *per expressum*, and it cannot be pertinent of the mains of Uphall, wherein she is infeft. The Lords found the letters orderly proceeded, notwithstanding of the reason of suspension.

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1634. February 4. The LAIRD of WEDDERBURN and the KING'S ADVOCATE
against JOHN STEWART of COLDINGHAME.

JOHN Stewart and Robert Douglas, donatars to the escheat and liferent of the said John Stewart of Coldingham, obtained decret, *in anno* 1632, against the Laird of Wedderburn and sundry other of the vassals of Coldinghame, reducing their feus, for not-payment of their feu-duties for the space of two years, conform to the Act of Parliament Ja. VI, Par. 15, cap. 246.

The Laird of Wedderburn intents reduction of this decret given against him for null defence, upon offer and consignation of the byrun feu-duties. In the which action, the King's Advocate compears for the king's interest, and concurs with Wedderburn, pursuer of the reduction, and alleges no such decret could have been given at John Stewart's instance; because, long before the giving thereof, John Stewart was denuded of the superiority of all the vassals of Coldinghame, by surrender thereof in his Majesty's favours, upon his submission; and, upon Act of Parliament made by King Charles, in his first Parliament, cap. 14, the superiority of all kirk lands are decerned to pertain to the king since the commission *in anno* 1627; after the which time John Stewart had no right to the superiority, but only to the feu-maills, while he were satisfied thereof, conform to the king's decret upon the submission. To the which it was answered, That the King's Advocate could not concur with Wedderburn, because he was at the horn. Then the advocate proponed the foresaid allegiance, for the king's interest, *per se*. To the which it was answered, That, albeit John Stewart was debarred, by his submission and the said Act of Parliament, from seeking the benefit of the said decret of reduction; yet, seeing Robert Douglas donatar to the liferent of John Stewart; by virtue whereof he had right to the liferent of Wedderburn, vassal to John Stewart, by being year and day at the horn, and a declarator obtained thereupon, and that he had not submitted, and this casualty had fallen to him long before the Act of Parliament, wherein dispositions made by the lords of erection were excepted, and his gift being long prior to the same, could not be taken away by the said Act. To the which it was answered, That the donatar to John Stewart's liferent, by virtue thereof,