

1630. *March 18.*LADY MAXWELL *against* Her TENANTS of MAXWELLHEUGH.

No. 21. The precept upon a service of a terce, with the instrument of kenning, is sufficient to instruct a pursuit for removing at a lady tercer's instance.

*Auchinleck MS. p. 238.*

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1632. *March 5.*A. *against* B.

No. 22.

If a woman pursue the tenants of a land wherein her husband died last vest and seised for the third part of her mails and duties, her service, without the instrument of kenning of terce, is sufficient title to instruct her summons.

*Auchinleck MS. p. 238.*

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1633. *February 15.* LADY BALMAGIE *against* LAIRD BALMAGIE.

No. 23.

If a land be wadset, or burdened with annual-rents, the lady falls terce but of as meikle as is from the time of her husband's decease; although the heir redeem the said wadsets or annual-rents after his father's decease, the relict can crave no terce thereof.

*Auchinleck MS. p. 238.*

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1665. *January 26.* LOGAN *against* GALBRAITH.

No. 24.

The exception, "*pro indiviso*," not sustained to hinder removing a relict from a house, as being a tenement indivisible, out of which she had a terce.

Logan charges Galbraith to remove from a house; who suspends, and alleges, that she is served and kened to a terce of the house, which terce she bruiks *pro indiviso* with the two thirds. The charger answered, The reason ought to be repelled, because, albeit the defence *pro indiviso* be relevant against such who can obtain division, it being their own fault that they do not first divide, or they pursue removing, but where it is a house, being *unum tenementum indivisibile*, the heir, or successor of the husband, who has two thirds, and continues in his possession as well as the relict in her third, ought to be preferred in the possession, *quia majus trahit minus*.

The Lords found the answers relevant to elide the reason, and decerned the relict to remove, with this quality, that if the fiar did not dwell in the house himself, the relict should be preferred, giving as much mail as any other tenant, and giving caution for the two parts.

*Stair, v. 1. p. 257.*