

1634. *February 11.* LADY BARNS *against* JEAN GUILL.

A SENTENCE obtained before the commissary of Aberdeen, holding the defender as confessed, was found null, because it was given the time of the sitting of Parliament; in which time it was found that no judge could proceed in any part of the kingdom: For the Parliament sitting, which was the Supreme Court and Convention of all the Estates, and proclamation being made to all the lieges thereof, all the lieges were thereby freed from appearing in any other judgment-place, and might in reason attend the Supreme Court, and wait upon the ordinances and laws there to be made,—the extent of that court being universal, and reaching to all the subjects. Neither was it respected, that both the parties were women; whereby it was alleged by the charger, that they had neither necessity to attend, nor was there probability that they should attend at Parliament; for it was found, that no judge ought then to sit, but that all judgments and other courts should be silent during the time of Parliament. Therefore they reponed the defender, who was suspender, to her defences, as the decret were not given; to be proponed in the same place of suspension, without necessity to put the party to any other new pursuit therefore.

*Act.* Oliphant. *Alt.* Heriot. Hay, *Clerk.*

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1634. *March 5.* WHITEFOORD *against* The LAIRD of CRACHLAW.

IN a double poiding betwixt the donator of young Crachlaw's liferent-estate and Crachlaw's creditors, which of them should be answered of a yearly duty addebted to the rebel; wherein the creditors claiming preference to the donator, because the donator had given bond, at the time of the acquiring of the gift, to the treasurer, that the same should not be prejudicial to the rebel's creditors: And the donator answering, that that bond cannot be extended in favours of any creditors but to such as were creditors the time of the gift, and not in favours of any creditors who had acquired their bonds since;—the Lords repelled the allegiance proponed for these creditors, seeing these bonds and obligations were long after the date of the said gift and general declarator; for they found that such bonds, being, as said is, granted by donators to the king's officers, should only extend to debts owing to creditors, before the purchasing of the gift, and to no debt contracted after the gift.

*Act.* Neilson. *Alt.* ———. Gibson, *Clerk.*

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1634. *March 14.* JOHNSTON *against* IRWIN.

ONE Johnston, as assignee made by Irwin of Braes, to an obligation of 1400 merks, addebted to him by another Irwin, pursuing for delivery of the same;

the maker of the bond, conform to his ticket, granting the receipt thereof from the cedent, and obliging him to redeliver the same; and the said debtor alleging the assignation to be null; because, albeit it was subscribed by two notaries, yet the same was not done *unico actu*, as is necessary, but only by one notary before two witnesses to his subscription, and by another notary before other two witnesses to his subscription; and so is not agreeable to the Act of Parliament, being a matter of importance: And it being answered, that the Act of Parliament requires not that there shall be four witnesses present to the subscription of each one of the two notaries, and that writs subscribed by two notaries before two witnesses, to each one of their subscriptions, are null; but, *negative*, declares writs which are not subscribed by two notaries before four witnesses to be null; and which is done to eschew falsehood:—This reply was not discussed; but the allegiance was repelled, because the cedent concurred with the assignee, and assisted the pursuit; which the Lords found supplied any defect alleged in that assignation.

*Vid.* 20th March 1633, Craig *against* Cow.

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1634. July 22. JAMES LADLY *against* The COMMISSARY of DUNKELL.

THE commissary of Dunkell being pursued by Mr James Ladly for payment of an annual-rent of 28 bolls victual, wherein Mr Thomas Abercrombie died infert, and that of divers years bypast; which the pursuer acclaimed as donator to the escheat of Robert Abercromby, son and executor to the said umquhile Mr Thomas, and which were intromitted with by the commissary; who alleging that he had lawfully redeemed the said annual-rent by payment of the principal sum, whereupon the annual-rent was redeemable to the daughter of the said Mr Thomas, who had right thereto by her father, and whereupon she was infert; and the most that can be craved for bygones is only 10 per cent. of the principal sum, and not the victual annual-rent, and prices thereof acclaimed, in respect of the 134th Act of Parliament, 1592, which provides that annual-rents be redeemable after that manner, and that the party can be subject in no higher annual-rent than 10 per cent. This exception was found relevant, albeit the infertment of the annual-rent was before the Act of Parliament: And the Lords found the defender only subject for all bygone years acclaimed, at ten for ilk hundred; and albeit the pursuer replied, that the defender might redeem by payment, and consigning of the principal sum and 10 per cent.; and that the order is sufficient, although no more were consigned; yet that will never hinder the wadsetter to pursue, by way of action, the defender, for payment of the greater quantity whereto his annual-rent extended more than his annual-rent of 10 per cent. as he now does, and has been usually done in the like cases before. This reply was repelled, and the action only sustained for 10 per cent.; but, because this was neither offered nor consigned at the time of the redemption, and that the pursuer had obtained divers decreets against the defender for these bygones, the Lords modified 300 merks of expenses, to be paid by this defender to the pursuer, by and beside the sum whereto the annual-rent, now restricted to 10 per cent., did extend to.

Hay, Clerk. *Vid.* 6th July 1630, Nisbet *against* E. Cassils.

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