

superior lord of Dryburgh, which, if the defender will disclaim, the pursuer will acquiesce. The Lords found no necessity of continuation.

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1628. *March 11.* MURE *against* CUNNINGHAME.

THE sum of 200 merks being promitted in tocher to a woman, by her friends, in her contract of marriage, and the sum being pursued for, it was alleged, That the contract being subscribed but by one notary, did not oblige the party promitter of such a sum. The Lords repelled the exception, in respect it was contained in a contract of marriage; which the Lords are in use to sustain, albeit the same be subscribed but by one notary.

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1628. *March 11.* MACKMICHAEL *against* MAKFEGIE.

EXECUTORS are not obliged, in law, to pay annualrent for legacies, *ante sententiam*, except the testator provide that annualrent shall be paid by the executors.

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1628. *March 12.* The COUNTESS of DUMFERMLING *against* The EARL of DUMFERMLING, Her SON.

THE umquhile Earl of Dumfermling, Chancellor, in the contract of marriage betwixt him and my Lord Yester's sister, obliges him to provide his future spouse, in conjunct fee or liferent, of all the heritages that he should happen to acquire during the time of the marriage. Before he was married, he had right to the teinds of Fyvie, by tacks. After the marriage, he obtains the heritable title of the said teinds from the Marquis of Hamilton, as having the erection of Aberbrothick. After the Earl's decease, the relict pursues her son, to infest her in the heritable right of the teinds of Fyvie, conform to the contract. Her son is content, reserving the right of the tack which his father had acquired before the marriage;—and alleges, That his mother could have no more benefit by the infestment but the duty which was obliged, by the tack, to be paid. The lady alleged, That the posterior heritable right did diminish the former tacks. The Earl alleged, That the prior tacks did only sleep so long as the heritable right stood in the person of him that has right to both; but, if the heritable right be reduced, then the tack may waken and revive; or, if the heritable right be disposed to another person, the tacks may be reserved. Which last allegiance the Lords found relevant.—*12th March 1628.*