

LADY CORSBIE *against* The LAIRD of CORSBIE.

THE Laird of Corsbie, by ordinance of Secret Counsel, gives a bond to his wife, to pay to her the sum of 800 merks for a year's entertainment, and to deliver to her all her clothing which he had of her: upon his bond, his wife raising a charge to deliver a number of particular pieces of clothing of great avail; he suspends, that a charge could not be given to him upon a general bond, without probation. The Lords ordain the charger, first to prove the particulars, before a charge could be sustained for them.

Page 15.

NINIAN HAMILTONE *against* JOHN SYME.

ISABELL Hamiltone, sister to Ninian Hamiltone, was married to John Syme, at the mill of Aberdour, in September 1634, and deceased in November 1635, leaving a son called Robert, who was confirmed executor to his mother, but not served heir, and, after his mother's decease, lives two years. Before the contract of marriage, John Syme received four thousand merks of tocher, for the which she was infest in the said mill of Aberdour, and is obliged, if J. S. her spouse decease before her, to pay to the heirs to be procreated of the said marriage, two chalders victual yearly, for their education; and J. S. is obliged, if there be no heirs of the said marriage, to pay to the said Isabell, her heirs, executors, or assignees, the sum of 2000 merks, in contentation of all the moveable goods and gear which may fall to them through her decease. Ninian, brother to the said umquhile Isabell, is confirmed executor *ad omissa* to his sister, and therein has confirmed the said 2000 merks, and obtained decret thereupon, before the commissaries of Dunkell: which the said John Syme has suspended, and seeks to be reduced for the self-same reasons,—*1mo.* The bond is conditional, in case there be no heirs; which condition fell not out the time that the bairn confirmed the mother's testament, and so there could be no dative taken *ad omissa*, because the debt was not *in rerum natura*; neither could be, so long as the bairn lived. To the which it was answered, That the pursuer could have no other way to pursue for his debt, but by taking the said dative *ad omissa*; and, in this case, the word *omissa* is not taken *privativè*, but *negativè*, *quasi non confirmata*. Which the Lords sustained, to give the brother action to pursue the debt *quando extitit conditio*.

Page 48.

ROSS *against* M'REULE.

THE minute of an instrument of resignation, noted in the back of the procuratory, and subscribed by the notary; after the notary's decease, is desired by a summons to be extended, and given out under the Clerk Register's subscription;

at the least, that the said minute may make faith. The Lords sustained the last part.

Page 111.

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The LAIRD of DRUMQUHASILL *against* KNIELLAND.

WARNING made by Drumquhasill to Knielland, to remove from certain lands ;— it was alleged, That the warning was not made and executed at the kirk of ———, within the which the lands ly that are contained in the warning. To the which it was answered, That the warning was made at the kirk of Pasley, where the persons dwelling upon the said lands resorted to the hearing of the Word, ministration of the sacraments, and burials. To the which it was duplied, that the resort of people to a certain kirk to hear divine service, makes not them to be of that parish ; but the payment of their teinds, great and small, which the said lands paid to the kirk of ———. The Lords found the warning not executed at the right parish kirk.

Page 116.

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MARGARET CRAIG *against* OLIPHER SINCLAIR.

OLIPHER Sinclair being decerned, by the commissaries of Edinburgh, to marry Margaret Craig, he gives her a bond to complete the marriage with her betwixt and a certain day, and, failing thereof, to pay her the sum of 800 merks ; she, after the expiring, finding him to go out of the country, arrests some goods and gear of his, and craves that the same may be made forthcoming. It is alleged, No failie can be decerned for not completing of the marriage, *quia matrimonia debent esse libera* ; to the which he had been decerned by the commissaries, upon his promise and copulation proven to complete the marriage ; so he cannot resile *rebus integris*. The Lords repelled the exception.

Page 125.

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BOYD, in Perth, *against* BOGES, his Tutors and Curators.

¶ If the mother decease before the father, and her spouse confirms the testament, and intromits with her gear, and lives a long time after his wife, her bairns cannot pursue tutors or curators for the gear contained in the mother's testament ; seeing it is presumed that the same is contained in the father's testament.

Page 239.

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