

1672. *January.* KINGENNY *against* MARGARET SCRYMGEOUR.

THAT tutors nominated, and for a time not accepting, are only accountable from the time of their acceptance, for omissions and commissions, and not from the date of the nomination, and that the pursuing for exhibition of the minor's writs was an acceptation and behaviour as tutor. This was found betwixt Kingenny and Margaret Scrymgeour. *Vide* Balfour, *titulo* Of Reduction of Sentences.

Advocates' MS. No. 307, § 3, folio 126.

1672. *January.* LADY MILNETONE *against* The LAIRD.

IN the Lady Milnetone's case with the Laird, the Lords found that bribing and corrupting of witnesses may be objected *in secunda instantia*, and that the same being proven, the sentence of divorce which proceeded upon the depositions of these witnesses would reduce. Then the great question was, how the bribing was probable; for it seemed dangerous to refer to the lady's oath that she had bribed them, the import of that being criminal: and to prove it by witnesses would prove an endless vexation; seeing a reprobator of their testimony might be raised, as if they had been bribed to depone that the former witnesses were bribed, which second bribery, if it were probable by witnesses, ye might so go on *in infinitum*. The Lords found the lady should give her oath on it. Who deponed *negative*; whereon she was assoilyied from the reprobator. Sir G. Mackenzie's pleading says, they found it probable *per testes omni exceptione majores*. *Vide supra*, thir same parties, *24th February 1668*, page 439.

Advocates' MS. No. 307, § 4, folio 126.

1672. *January.*

IT came to be debated who was fiar in this conception. A sum is provided to a man and his wife and to the heirs of the marriage, which failyieing to the wife's heir. The termination on the wife's heir makes the doubt: yet the Lords found the man fiar, it being a donation flowing from him, and that he might have uplifted the sum in his lifetime and discharged it. *See* Hadinton, *10th November 1609*, *Bartill Tullo against Laird of Carberry*,

Advocates' MS. No. 307, § 5, folio 126.

SIR JOHN KEITH *against* ———.

AN inhibition being sought to be reduced upon this single head, that though it bore the party inhibited to have been personally apprehended, yet it wanted

that a copy was delivered to him; the Lords annulled the inhibition for this want, although they offered them to prove, in fortification of the messenger's execution, that a copy was truly delivered to him. This was between Sir John Keith and ———. *Advocates' MS. No. 307, § 6, folio 126.*

1672. *January 20.* ——— *against* SIR ANDREW and LADY DICK.

SIR ANDREW DICK's lady and himself being pursued upon a bond granted by her, it was ALLEGED to be null, because given by a wife clad with a husband, without his consent. ANSWERED, *Imo*, She was *præposita negotiis*, and the subject matter of the bond was what fell under her præposition, viz. for meat and drink furnished; and so being *ob alimenta familiæ præstita*, it was *in rem mariti versum*; and that it was for the price of victual, refers to her oath. REPLIED, The wife can depone nothing in prejudice of her husband.

Yet the Lords found in this case, the wife ought to depone; and she confessing that to have been the cause of the bond, they would sustain it. Yet see *Hadington, 23d June 1613, Clement Russell against the Earl of Argile*, which seems somewhat contrary.

Advocates' MS. No. 308, folio 126.

1672. *January 24.* MR. JOHN ANDERSONE *against* JOHN WATSONE.

I WAS this day informed of an action pursued in 1664, by Mr. John Anderson, parson of Dysart, against John Watsone, heritor of the Pathhead, as he who had the only Kirklands in the parish, for a glebe. Wherein it was ALLEGED, *Imo*, That being a minister of a burgh royal, he could have no glebe.

ANSWERED,—That all ministers, though of burghs royal, had right to a glebe, providing they had any land-ward parish belonging to them, as he had; and that the 20th act of Parliament in 1663, does not exclude all ministers of royal burghs from a glebe, but only some.

The Lords found he had right to a glebe, because he had likewise the cure of a country parish.

2do, They ALLEGED, that the parson of Dysart could seek no glebe, because of old they had a glebe designed to them, viz. That part of the town of Dysart which is called the rectory, which at that time was in acres,* and was by the parsons since feued out at sundry times to several persons who have built houses thereupon, and pay a small feu-duty of two pence or three pence to the parson as superior and rector of the said rectory; who likewise enters the heirs and singular successors in these tenements for a composition; and if the parsons have

* Which acres at least were parson's land, and, by the act of Parliament they must be designed before other kirklands.