

1665. *December 12.* JO. RAMSAY *against* JAMES WILSONE.

IN a case betwixt Jo. Ramsay and Ja. Wilsone in Edinburgh, found that the dominion of moveables may be proven by witnesses ; and that a naked possession of the same, without a title in the person of him who gave or sold them to the possessor, is not sufficient in law to establish a right.

*Act.* Wedderburne.

*Alt.* Wallace.

*Advocates' MS. folio 55.*

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1665. *December 12.* KILBOCHO'S RELICT *against* The CHILDREN.

IN a case betwixt the relict of Kilbocho and the children of that marriage, wherein she was provided to the hail conquest, the acquiring whereof did burden the heir with debt equivalent to the conquest ; FOUND,—That was only conquest, whereof she behoved to have a liferent, which was acquired by her husband without contracting of debt ; and conquest in this case of a liferent was only found ought to be understood which is free, *deducto ære alieno*.

ALLEGED, That as the heir of conquest will not be liable in payment of the debt till the heir of line be discussed, so no more could the relict be liable to the debt contracted for the conquest, but the heir declared liable in payment thereof, and she have the same free. On the other hand, CONTENTED that a terce of moveables and a terce of lands agreed in this, that as a relict could pretend no right to a third of moveables, but deducing debts, so no more can she in a terce of lands.

*Act.* Wedderburne, Lockhart.

*Alt.* Wallace.

*Advocates' MS. folio 55.*

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1665. *December 20.*

SIR THOMAS NICOLSONE'S Lady *against* NAPER'S Heirs Portioners.

SIR THOMAS NICOLSONE'S lady, now Lady Prestoun, being provided to the annualrent of L.20,000 by her first husband, named Laper, or Naper, and convening the heirs portioners of her husband to pay it; ALLEGED, that they being heirs portioners, could not each one be liable *in solidum*, but only *pro æqua parte*.

ANSWER,—They behoved to be bound *in solidum*, at least *in quantum lucrati sunt* by their wives, who are heirs portioners served and retoured to their brother.

The Lords found the heirs portioners ought to be discussed once; and if they be insolvent, then to recur against the rest *in quantum lucrati sunt*.

*Act.* Wedderburne. *Alt.* Lockhart.

*Advocates' MS. folio 55.*