

It was EXCEPTED, That the charge whereupon the denunciation did proceed, was null: being given upon six days against the party living benorth the Water of Dee; and so contrary to the Act of Parliament.

To which it was REPLIED, The allegiance ought to be repelled, in respect of the defender's consent to the registration within six days.

The Lords repelled the defence, in respect of the consent, notwithstanding the Act of Parliament.

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1666. *January 27.* LADY BOOT and Her HUSBAND *against* The SHERIFF of BOOT.

IN the reduction pursued [at] the Lady Boot and her husband's instance, against the Sheriff of Boot, but mentioned the 24th January last,—

The Lords found, That a woman, after proclamation of bans, can grant neither bonds nor discharges, nor renunciations, in prejudice of her promised spouse, without his consent.

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1666. *January 27.* JEAN CRICHTOUN and JOHN ELIES *against* TENANTS, and ROBERT MAXWELL.

THERE was a contract of marriage betwixt William Maxwell of Kirkhouse, on the one part, and John Crichtoun of Crawfordstoun, taking burden for his daughter, Jean Crichtoun, on the other part; whereby, for the sum of 5000 merks, received in tocher, the said William is obliged to infest her in the lands of Minoly, and certain teinds, extending to £500 Scots of rent,—the said William his estate being near yearly £2000; and is obliged to provide her to the liferent of the conquest lands. The said William having conquest no lands, but having succeeded to the Earl of Dirletoun, to a part of his tailyed lands of 1000 merks of rent; the said William, being now deceased, the said Jean Crichtoun is kened to a terce of the lands, wherein he died infest; and the said Jean, and Mr John Eleis, now her spouse, pursue the tenants of these lands for a third part of their rents.

It was ALLEGED for Robert Maxwell, now of Kirkhouse, and his tutor, There can be no terce of these lands; because, there having passed a minute of contract, which was not extended during her husband's lifetime, that it ought now to be extended; and declared that the provision to the jointure-lands was in satisfaction of terce and third, according as it was the intention and meaning of the parties, and far exceeding the same in these [times.] They produce a process for extending, and a reduction for the kenning of the terce, for the same reason of extending the clause in the contract, as said is.

To which it was REPLIED for the pursuer, That the clause of the minute cannot be extended to be in satisfaction or beyond the words thereof, especially *in substantialibus* of so great weight as the renouncing of a terce.

The Lords repelled the defence, and found, That the minute of the contract of marriage could not be extended to be in satisfaction; and therefore found that the pursuer ought to have her terce, seeing she was not precluded by the minute.

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1666. *February 1.* WILLIAM FOUNTAIN *against* WILLIAM MAXWELL.

IN an exhibition of writs, pursued by William Fountain against William Maxwell of Nethergate;—it being controverted, whether the having of writs were probable by writ, oath of party, or by witnesses; and especially that member of the libel, of fraudfully putting away, how the same was probable;—

The Lords thought it a most perplexed business: and found, That, before citation, the having of writs was probable by witnesses; but that fraudfully putting them away, was not probable that way.

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1666. *February 1.* JEAN BATHGATE *against* JOHN ARMSTRONG and JOHN ROLLO.

IN an exhibition of writs, pursued at the instance of Jean Bathgate against John Armstrong:—

In this pursuit there was compearance made for Mr John Rollo, Henry Rollo, his son, and several other agents and servants in the house;—who ALLEGED, That they were not liable to depone anent the having of the writs, being members of the house; and, having received up writs of a party, they cannot swear in prejudice of their client.

The Lords repelled the allegiance, and found, They ought to depone: as was found in the like case against Sir Robert Hepburn.

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1666. *February 8.* GILBERT HAY *against* SIMON PRESTON.

IN a competition betwixt two base infeftments of annualrent, upon the lands of Cambo,—

The Lords preferred Gilbert Hay his infeftment to Simon Preston's infeftment, albeit Hay's infeftment was posterior to Preston's, being clad with possession; and found no necessity to Hay to allege seven years' possession.

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1666. *February 10.* ANDREW KERR of WELLS *against* WILLIAM BENNET of GRUIBBIT.

IN an action for teinds, pursued by Andrew Kerr of Wells against William