

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