

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

Bennet of Gruibbit; this being a multiplepounding raised at Bennet's instance, Andrew Kerr of Wells compearing, and none others that were called compearing and producing a right in his person; the right being quarrelled by Gruibbit;—

The Lords found the defender, Gruibbit, liable for the sums libelled, since none others pretended any right to the teinds.

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1666. *February 10.* CLAPPERTOUN *against* TORSONCE.

IN the action, mentioned 20th January last, betwixt Clappertoun and Torsonce,—Torsonce's defences being repelled, [he] craved, That he, being the first compriser, and his comprising being found satisfied and extinct, the Lords would allow him to purge the second comprising, by making payment to Clappertoun, the assignee thereto, of such sums as he had really paid out for the same.

Which desire the Lords repelled; but allowed him to be heard before the Lord Reporter.

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1666. *February 10.* SIR HARY HOME *against* The TENANTS of KELLO.

IN a pursuit for maills and duties, at Sir Hary Home's instance, against the Tenants of Kello,—

The Lords found, That a summons being executed, put the tenants *in mala fide* to pay to any other; and therefore they ought to suspend, upon a multiplepounding.

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1666. *February 11.* LORD BORTHWICK *against* WALTER SCOTT and JOHN TURNBULL.

THE Lord Borthwick having wadset the lands of Fearnisht and Gilmertoun to Walter Scott and John Turnbull, *in anno* 1660: both being in possession, and bruiking more nor paid the annualrent of their money at six *per cent.*; the Lord Borthwick pursues the wadsetters for payment of the superplus more nor pays them their ordinary annualrent, conform to the Act of Parliament.

It was ALLEGED by the defenders, That they could not count for the superplus of their annualrent but from the date of the citation: and that they could not count at all; because the Lord Borthwick had renounced all benefit of the act of debtor and creditor, and of all acts made and to be made.

The Lords found, That the wadsetters ought to count only from the date of the granter of the wadset's requiring them to accept of caution for their money; and that such an offer of sufficient caution, by way of instrument,