

1669. *January 26.* BOILL of KELBURN *against* MR JOHN WILKIE.

KELBURN, having given bond to Mr James Glendinning, minister, for £800, appointed to him for serving the cure at the kirk of Largs; Mr John Wilkie, as collector of the vacant stipends, did receive from Kelburn the sum of £400, and gave a discharge, bearing absolute warrandice, and especially to warrant him from the foresaid bond granted to Glendinning. Whereupon, and a decret recovered at Glendinning's instance, for payment of the whole sum contained in his bond, he did pursue Mr John Wilkie for the whole sum paid to Glendinning.

The Lords found, That Wilkie could be only liable for the sum of £400 received, and the annualrents and expenses to be modified, and not to the whole sum; notwithstanding it was ALLEGED, That the warrandice was special as to the whole bond granted to Glendinning, and did restrict the warrandice thereto; which they found, in law, could not be further extended.

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1669. *January 29.* WALTER SCOTT *against* SIR LAURENCE SCOT.

IN a reduction, pursued at the said Walter's instance, against Sir Laurence, of a bond for 7000 merks, granted to the said Sir Laurence *ex capite fraudis*, in so far as it was procured by a mere contrivance betwixt him and the notary; as appeared by a missive letter, and a ticket granted to the notary of £40, with a promise of other good deeds, enjoining him not to let the said Walter know any thing thereof:

The Lords ordained the notary, and witnesses insert, or any other witness who had any accession to the contrivance, to be examined *ex officio*; notwithstanding it was ALLEGED, That all these contrivances were only to induce the pursuer to grant the bond; but the pursuer being major, *sciens et prudens*, they ought to allege that he was circumvened when he subscribed the same.

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1669. *February 1.* ROBERT BROWN *against* JOHNSTON of COLCHRIE.

ROBERT Brown being assignee to a bill of exchange, granted by Colchrie, for the sum of £200 sterling,—it was ALLEGED, The said bill was null, not being subscribed by the defender, or by any notary or witness, being for so great a sum, there being nothing but a mark subjoined thereto.

The Lords repelled the allegiance, and sustained the bill; in respect that there were several bills produced, subscribed only with that same mark, which were of far greater value and importance; and that several merchants did depone that it was his custom to subscribe with such a mark, and that they believed this mark was truly his. As likewise, in respect that, by several former prac-

ticks, subscription by initial letters was sustained. This was done, *me reclamante*, upon these reasons:—That the practicks, sustaining subscriptions by initial letters, were where the same were done before witnesses, and the subscriber did not offer to improve; and that it was against our law, that the writ, neither being holograph, nor the mark put before witnesses, that a custom to subscribe some other being proven, which were acknowledged and satisfied by payment, should be sufficient, without any adminicle, to sustain any other bill or writ to be obligatory.

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1669. *February 3.* BEATIE *against* ROXBURGH.

BEATIE being assigned to the provision contained in the contract of marriage betwixt Roxburgh and Anna Sandilands; whereby Roxburgh was obliged to infest her in an annualrent, effeiring to 3000 merks; as likewise to a liferent of the whole conquest during the marriage. And accordingly, having conquest some lands, and provided her to the liferent thereof, Beattie, as assignee foresaid, did pursue for the annualrent of the 3000 merks.

It being ALLEGED, That she being infest already in as much rent as the annualrent of 3000 merks, it ought to be ascribed to the implement of that obligation; and so could only pursue upon the provision of conquest:

Notwithstanding whereof, the Lords found, That her infestment being in the conquest lands, did not hinder her to pursue for her liferent of the 3000 merks; they being distinct obligations and consistent.

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1669. *February 6.* CARGILL *against* LIDDELL.

CARGILL, being minister of a kirk at Glasgow, *in anno* 1662, and having served that year, did pursue the town of Glasgow for the last half-year's stipend; wherein compearance was made for Mr David Liddell, who succeeded to that kirk, and ALLEGED, That the pursuer, neither having received a new presentation from the bishop, nor having kept the anniversary thanksgiving, was deposed; and by an act of council, October 1662, it was declared, That all ministers, who should not keep the anniversary day, should have no right to that year's stipend, or any part thereof.

To which it being REPLIED, That, for the first part of the allegiance, in not taking a presentation; by an explanatory Act of Parliament, it was declared, That it should not be extended to the year 1662. And as to the second part, anent the keeping of the anniversary day, it being REPLIED, That the Act of Parliament, enjoining the same, was not penal; and that the Act of Council, declaring them to lose that year's stipend, could [not] be extended *ad præterita*:

The Lords did sustain the said reply to both these members, and found Cargill had right to the whole stipend 1662. This was done, *me reclamante*, upon this reason:—That the Act of Parliament having declared, That all ministers