

1678. June 21. WATSON of EDERNIE against WILLIAMSON.

THE Lords, in Watson of Edernie's case against Williamson, were dissatisfied that the commission for the plantation of churches meddled with valuing the price of ministers' manses, and recommended to the President to acquaint them it was not within the four nooks of their commission. Some called this a derogating from and encroaching upon a committee of Parliament, such as the commission; yet they have no more of the Parliament's power than precisely what is delegated to them. *Vol. I. Page 4.*

ANENT a DISPOSITION by a WIFE.

THEIR two points being reported to the Lords, they thought them worthy to ordain them to be heard *in præsentia*; they are as follows, *viz.*:

A woman, infest in lands, disposes them without her husband's consent: whereon the right so given by her is quarrelled as null.

ALLEGED,—The husband, by a writ under his hand, had given her a power and license to dispoise them by herself alone. ANSWERED,—That he could not do, for he is curator to his wife; and that is as if a tutor or curator should empower his minor to alienate his lands without his consent. See Balfour's *Prac. tit. Husb. & Wife, c. 15*; Stair, *tit. 4.* *Vol. I. Page 4.*

ANENT SALE.

A HORSE is sold, having a disease upon him the time of sale: (the same will hold in any other thing that falls under commerce:) *Quær.* if the buyer come to know it, whether he can offer it back, *actione redhibitoria*, within forty or sixty days; or if he must immediately offer it back, so soon as he knows the vitiosity, else will be secluded both from the *redhibitoria et quanti minoris*, on the *edictum ædilitium*. See some observes from the Roman law, in the beginning of another MS. *ch. 14, de Edicto ædilitio*, and the cases there mentioned.

ANENT WITNESSES.

BY the English law, no witnesses are examined upon oath against the King's interest, even though they be led by pannels to prove their defences. But the witnesses' declaration is allenarly taken by the judge, who makes of it whatever he pleases. *Vol. I. Page 5.*

ANENT FORFEITURES.

THE case of forfeitures with us is very hard; and by it many loyal and innocent people come to suffer; and I think their exorbitancy should be hemmed in: and particularly all money due to hospitals or other pious uses (such as the debt owing by Argyle to Heriot's hospital, which now falls upon Errol and Kinghorn, his cautioners, without all hope of relief,) should be salved out of forfeitures; as they are exemed from bearing burden by the Act of Parliament 1633, where money is assessed.

This ridiculous clause was found in a certain contract, that the party observer, or willing to fulfil, should pay one thousand merks to the failier.

ANENT OATH DE CALUMNIA.

SINCE it may be craved *in quavis parte processus*, it may also be sought after the decret is pronounced. I think either the pursuer or defender may seek it before the decret is extracted, at any time; and if the party in whose favours the decret is pronounced, refuse to give it, he loses the cause; but, after extracting, it cannot be sought, because it is competent and omitted.

ANENT TEINDS.

NONE can pursue for valuation of teinds, but only heritors and liferenters, by the Acts of Parliament 1633, and since syne. Hence rentallers, tenants, and tacksmen, (though for never so many nineteen years,) cannot. *Vid. Durie, 8th March 1639, L. of Hesleside. Vol. I. Page 5.*

SIR GEORGE LOCKHART *against* HOPETON.

THIS question occurred between Sir George Lockhart and Hopeton, who had bought Abercorn from Sir Walter Seton. Where a bond is a part of the price of the land, and narrates it to be so, and bears a simple obligement for payment, *quær.* if any of that money can be retained by the debtor, buyer of the land, upon the account of clear and liquid encumbrances, inhibitions, &c. which he knew not of when he gave the bond. Sir G. Lockhart contended it could not, since the bond was simple and pure, and is not payable to the seller, (which would much alter the case,) but to a creditor, who has a *jus quæsitum*, and is not concerned to purge with his money, which has now altered its nature, and cannot be more looked upon as the price of land; and the buyer should have searched for these encumbrances, *et sic caveat emptor*. Yet it seems very natural that the price of land should purge real burdens on it, and stand affected to that end. *Vol. I. Page 5.*

ANENT LIFERENT.

A WIFE is infest in the liferent of land, with the perninents. *Quær.* if she may cut planting, if it be only for repairing tenants' houses upon the ground. If it be a forest, or such a wood as the law calls *sylva cædua*, she may. See Craig, p. 189, *et l. 9 D. de Usufr.*; but, if it be only policy or planting for decoration about a house, it seems hard to permit that devastation, though it be profitably bestowed, and converted to the good and utility of the fiar. Yet I hear that, this Session, the Lords found a liferentrix might cut trees for necessary uses. *Quær.* if a wadsetter may do as much. I think he may. Yet Craig, p. 214, tells how a vassal was quarrelled by the superior, as having amitted the feu, for cutting the great trees that were on the ground. *Vol. I. Page 5.*