

1678. *December 19.* GRAY of SKIBO *against* COLIN ROBERTSON.

IN the action, Gray of Skibo against Colin Robertson, my Lord Newton would not permit Skibo to propone improbation, by way of exception, against his father's bond granted to John Robertson, because the bond was not produced, nor *in campo*, and there was nothing produced but a decret recovered upon the bond; and so, except the production were satisfied, they could not proceed to cognosce on the falsehood of the bond; and therefore he decerned, reserving their improbation, by way of action, as accords.

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1678. *December 19.* PATERSON *against* JOHN WILSON, Mason.

PATERSON against John Wilson, mason. Newton found competent and omitted, in inferior decreets, not receivable where the exception omitted consists *in jure*, because the party and his procurator might be ignorant thereof; but not where it consists *in facto*, *præcipue proprio vel recenti*, that the party cannot but know of.

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ANENT the PUNISHMENT of PERJURY.

The pains of perjury, by 19th Act 1551, *viz.* confiscation, infamy, and warding, seem too slender, and its punishments ought to be augmented to death. See M'Keinzie's *Criminals*.

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ANENT *DEBITA FUNDI*.

THE price of a minister's manse, nor the communion elements, are not real *contra fundum*, nor *onera realia quoad bygonos*, but only for the future. See the Act of Parl. 1649, making the stipends of ministers *debita fundi*; but it is rescinded. See a similar case, 19th *December 1679*.

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ANENT RESIGNATIONS.

It proves very oft prejudicial, that there are no diets of Exchequer more frequently kept in the vacance for receiving resignations; whereby the granter of the procuratory of resignation dying, the whole falls, and the infestment cannot be expedie upon that procuratory. The Act of Parl. 1600 empowers the Secret Council to accept resignations; but that Act is in desuetude.

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1678. *December 19.* SEATON of BLAIR'S HEIRS-PORCIONERS *against* LORD PITMEDDEN.

IN the pursuit, at the instance of the heirs-portioners of Seaton of Blair against Sir A. Seaton of Pitmedden, the Lords found, on the 22d December

1674, that a brother nor no other *in linea collateralis* could be convened as successor *titulo lucrativo post contractum debitum*, but only he who was *alioqui successurus necessario*, and not only *probabiliter*. See *February 1670, Whitefoord*; and *February 1674, Lothians*. *Vol. I. Page 30.*

ANENT MULTURE of BEAR.

I SAW a decision dated *3d July 1673, Oliphant against Oliphant*, where the Lords found that bear behoved to pay multure, though it tholed not fire and water. *Vol. I. Page 30.*

1678. *December 20.* The TOWN of GLASGOW *against* SHAW of GREENOCK.

IN the action between the Town of Glasgow and Shaw of Greenock, the Lords having considered the Act of Parliament 1672, Anent the Privileges of Burghs Royal, They found, if the royal burghs do not seize the unfree goods, they can have no action for the value of what they can prove was sold and vented by unfree-men, unless they had either apprehended them, or used arrestment; in which last case, though the said unfree commodities be out of their hands, or consumed, yet the Lords will hold the unfree-men *pro possessoribus, quia dolo desierunt possidere*. *Vol. I. Page 30.*

1679. *January 1.* MURRAY of SKIRLING *against* MR BUCHAN, his Minister.

THE Lords, upon occasion of a bill given in by Murray of Skirling against Mr Buchan his minister, in a process between them, made an act of sederunt anent the clerks their minuting of defences, *viz.* to pass over all dilatory defences, unless they be sustained, and to write all immediately upon the process, and not upon scrolls and books apart, out of which they afterwards extend them. This act was thought impracticable; and by this way it cannot be known what was competent and omitted, and what was repelled. *Vol. I. Page 30.*

ANENT PACTIONS CONTRA FIDEM TABULARUM NUPTIALIUM.

ANENT Pactions *contra fidem tabularum nuptialium*,—see *June 1677, f. 288*, and *Donald Foulter's case*, in Mack. Observ. on Act 21, Parliament 1621.

A bond granted by a wife after a contract of marriage, or proclamation of banns, is reputed *stante matrimonio*: as was found in *Lady Bute's case*; *ergo*, a bond granted by her future spouse to her at that time is *in pari casu*. See *June 4, 1679, Ewart*. *2do*, Bonds granted *inter sponsum et sponsam in æstro amoris*, are more to be reputed donations, and more exorbitant than what are given after the marriage; there being a greater eclipse of the use of reason at that time then afterwards. *3tio*, It is *contra fidem tabularum nuptialium*. Anent donations *inter virum et uxorem*, see *Durie, 17th July 1632, L. Borthwick*; *et infra, 18th December 1679, de Pacto Proxenetico*; and *8th January 1680, Raeth*.