

courts. I think he is not. See this agitated at great length in my Observes upon the Act of Parliament made in 1672. *Vol. I. Page 68.*

1679. *December 11.* THOMAS WILSON *against* WILLIAM BROWN.

THE debate betwixt Thomas Wilson and William Brown being reported, the Lords reponed William Brown, against the decreet, to his oath, or allowed Thomas Wilson to prove his account by witnesses; and decerned Brown to pay to Wilson £20 Scots, as the expense of his decreet, which is now turned into a libel. *Vol. I. Page 68.*

1679. *December 16.* ANENT BLANK WRITS.

ONE charges upon a bond: compearance is made for a third party, and he ALLEGES the bond was granted originally blank in the creditor's name, and was so delivered to one who was his debtor; and he had arrested the money before this charger's name was inserted in it; and he offered to prove this by the writer and witnesses.

ALLEGED,—The bond being in the charger's name, it could not be taken away but only by his oath, or a writ under his hand. Yet the Lords, before answer, ordained the principal bond to be taken out of the register, that, after inspection, they might consider whether or not the creditor's name had been blank in it *ab initio*, and was filled up since with a different hand and ink; or if it was all one context. And ordained the creditor charger to give his oath of calumny when his name was filled up therein, or the same delivered to him. And thereafter ordained the writer and witnesses to be examined, to expiscate if there was any fraud. But this was judged by some a hard and dangerous interlocutor. *Vol. I. Page 69.*

1679. *December 18.* ANENT PACTUM PROXENETICUM.

It was debated whether *pactum proxeneticum* was lawful, seeing it was done *in æstro amoris*, which is a kind of fury, and *gesta in furore non tenent*; but *æstrum amoris* is not so known in law as to be a ground whereon to quarrel what is then done, else all matrimonial provisions might be quarrelled. See *Benevent. Stracca de Proxenetis*; and Harprecht. *ad § 1, Inst. de Inoff. Test.* But I think there will be little doubt that a curator ought to seek no reward for procuring a good marriage to his minor. *Vol. I. Page 71.*

1679. *December 19.* The COUNTESS of CASSILS *against* The EARL of ROXBURGH.

IN an action betwixt the Countess of Cassils and the Earl of Roxburgh, an arrestment was quarrelled as null, because it was not personally done, and yet bore not six several knocks to be given at the most patent door.

Some ALLEGED these knocks were required in citations, but not in arrestments. It was ANSWERED,—They offered to prove a copy was left with his wife. Which (though the execution bore not,) the Lords sustained it as sufficient to maintain the arrestment, though it wanted the six knocks; since a citation given to one's wife is almost personal, and will very readily come to his knowledge.

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1679. December 19. ANENT the DESIGNATION of GLEBES.

I HEAR that the Lords found, that the relief which is due to an heritor, of whom the designation of a minister's glebe is taken, was only a personal obligation on the present heritors of that parish and their heirs, but would not affect and reach their singular successors in these lands. So that it is their interest immediately to pursue their action of relief, seeing this relief is not *debitum fundi*; for nothing is to be interpreted *debitum fundi* but what either an express law or uncontroverted practice hath made such. And it were against the freedom of commerce to make too many *debita fundi* for reaching singular successors, who can be certiorated thereof by searching no register for designation of glebes or the like.

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1679. December 19.

It was queried if a decret of transferring must be extracted before you be obliged to debate in the process transferred; or if the minute and signature, bearing that there is a decret pronounced, be sufficient, and will be warrant enough for proceeding in the principal cause. *In rigore juris* it should have been extracted: however, it was *casus judicis arbitrarius*, until the Lords of Session about this time, by their Act, ordained all decreets of transferring to be extracted, before they can proceed in the old cause; for the President's son, Mr James, is now a clerk, to whose advantage it is calculated.

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1680. January 2. ANENT SUMMONSES and PROCESSES.

I.—It was ALLEGED against a summons,—No process; because the second citation is given before the day of compearance in the first citation is elapsed: and thereupon he takes instruments: the pursuer takes up his second execution and mends the date of it, and offers to abide by it.

REPLIED,—That he might have amended it before calling, but he cannot be suffered to do it now after that it is quarrelled; but he ought to cite of new again for the second diet.

II.—A process is returned by an advocate, and two or three are marked *a partibus*; but all the time it is never seen by any advocate, and then it is of new enrolled. At the calling it is ALLEGED,—That it must be seen *in communi forma* before they can be obliged to debate, they not having seen it now these several years; and, if year and day expire, there are Acts of Sederunt appointing it should be given out again to be seen by the contrary party's advocate; and it is relevant to offer to prove, by the clerk's oath, that the *partibus* was not yearly marked, but only lately. See Act of *Regulat*.