

1680. *July 7.* SLOWAN *against* The LORD of BARGENIE.

SLOWAN having charged the Lord Bargenie upon his bond of borrowed money, he suspends upon this reason,—That the true cause of granting the bond was for services to be done to the Lady Clanbrisle, Bargenie his lady; which were never done, but the contrary. Whereupon Slowan having deponed, by commission, that the bond was granted for disbursements and furniture to my lady, truly performed,—at the advising of the oath, it was alleged that the oath making it evident that the bond was granted by my Lord, *stante matrimonio*, for my lady's debt, to which he was only liable *jure mariti*, the marriage being dissolved, he is free; especially seeing he made no profit thereby; in the same way as if he had been decerned, as husband, to pay.

It was ANSWERED, That husbands' bonds are not dissolved as decreets against them *jure mariti*; nor doth the oath prove that the furniture was before my Lord's marriage; for, being during the marriage, my Lord is simply liable, and not *pro interesse*.

The Lords found that the oath proved not; and that my Lord's bonds could not be dissolved by the dissolution of the marriage.

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1680. *July 13.* The KING'S ADVOCATE *against* YEOMAN of DRYBURGH.

The King's Advocate pursues Yeoman of Dryburgh for the avail of his marriage: who alleged Absolvitor, because his father had no ward-land, but was infeft upon an apprising for his security; which did not denude the King's vassal of the fee, but was consistent therewith, as *pignus prætorium*; especially, the appriser having died within the legal. The Lords having ordained the estate and burdens to be instructed, the defender deponed upon his rental; but was not suffered to depone upon the burdens, which his oath could not prove; and the term was circumduced against him, for not instructing his burdens, and for not proving this defence,—That the apprising was extinct by intromission or payment in the defunct's time: so that the defunct died uninfeft; and so his heir could not be liable in a marriage.

The Lords, upon these considerations, modified only two years' rent, acknowledged by the defender's oath.

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1680. *July 13.* ARCHBISHOP of GLASGOW *against* The REPRESENTATIVES of The COMMISSARY-DEPUTE of DUMFRIES.

THE late Archbishop of Glasgow pursues the successors of the Commissary-Depute of Dumfries for the quots of testaments that were confirmed when he was depute; and that, upon the bishop's injunctions to the commissaries, approved of by the King, and recorded in the books of sederunt, bearing this article,—

That where there was no quot-masters named by the bishops, the commissaries should be countable for the quots of all testaments confirmed by them; which would be illusory, if their deutes were not liable for the quots of testaments confirmed when they were deutes.

It was ANSWERED, That the injunctions mentioned no deutes; and, though it did, it could only extend to the testaments confirmed by the deutes when they actually sat.

The Lords found the deute also liable for all testaments confirmed when the deute sat; seeing he ought to have secured the quot, before he confirmed the testament; if he had not made count and payment thereof to the principal commissary.

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1680. *July 29.* Mr WILLIAM AIKMAN *against* JAMES TARBAT.

Mr William Aikman pursues James Tarbat, as representing his father, for payment of the balance of an account betwixt the pursuer's father and the defender's, signed by both.

The defender ALLEGED Absolvitor; because to the count subscribed there is subjoined a new count, all written with the pursuer's father's hand, by which the pursuer's father is stated debtor, as by note, in £1000, to the defender's father: and therefore craves to be assoilyed from the count, and to pay him the balance of the last count; which though not subscribed, yet being the hand-writ of the pursuer's father, produced by himself, it is probative in the same way as notes of receipt written by creditors' hands upon their principal bond; which are always allowed in part payment of the bonds, though not subscribed, though bonds be more solemn writs than counts: and cannot be presumed written *spe numerandæ pecuniæ*, or upon some design which did not follow; being immediately subjoined upon the same page with the principal subscribed account.

The PURSUER ANSWERED, That such unsubscribed notes upon accounts cannot prove. And, though it could, the balance of the unsubscribed account bearing, (as per note,) hath no effect, unless the ticket were produced: for, wherever there is a subscribed count delivered, which used to be retired upon satisfaction, it is ever presumed retired and satisfied, unless it be produced; and therefore accounts or missive letters relative to bonds or tickets, have no effect without the bonds or tickets; for no man can remember what letter he writes.

The Lords found the unsubscribed account subjoined to the account on the same page, and written by the accountant's hand, probative to take away the subscribed account; but not to burden the accountant with the balance of the unsubscribed account, seeing the balance bears, *as per note* given to the creditor of the balance, unless that note be produced, which is otherways presumed satisfied and paid.

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