

1681. *June 7.* GEORGE WEDDELL *against* GEORGE SALMOND.

GEORGE Weddell, having married his daughter to George Salmond, and paid the tocher, pursues Salmond for repetition of the tocher, because the marriage was dissolved within year and day. The cause was disputed the 25th day of February 1680;—

And the Lords found, That, if the year was complete, and the day after the year begun, the husband should have the tocher; otherwise that it should return to the father. But the point to be proven being so narrow as the precise time of the woman's death, the Lords allowed witnesses, *hinc inde*, to be examined upon the time of her death; and both men and women were allowed as witnesses *ex officio*. And being this day advised, it was proven, That the marriage was solemnized upon the 23d day of November, betwixt eleven o'clock and one in the afternoon; and that the woman died upon the 23d day of November, about ten or eleven o'clock at night, in the next year. Whereby the question came, Whether the marriage had stood undissolved for a whole year, and a part of a day after the year, or not. And whether the year was to be reckoned *de momento in momentum*: so that, the marriage being solemnized about twelve o'clock the 23d day of November, if the wife lived a twelvemonth, *viz.* 365 days and six hours, and an hour more, it would be sufficient to reckon *de momento in momentum*; or, whether the reckoning should be *calculo rotundo*, by the full number of the days of the year in which the marriage and death occurred, without consideration of hours or moments.

The Lords found, That the adjection of a day to the year was to shun the debate of hours or moments; and therefore found, that it being proven that the woman was married the 23d day of November, and died the 23d day of November the next year, there could not be two twenty-thirds of November in one year; and therefore the woman lived one year, and a part of the day of the next year; and so the tocher was found to belong to the husband, and he was assoilyed from repetition.

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1681. *June 8.* The KING'S TRUMPETERS *against* The BISHOP of CAITHNESS.

FERGUSON and others, having a gift, from the King, of being his Majesty's trumpeters, and all emoluments thereto belonging; having obtained general letters thereupon, they charge the Bishop of Caithness to pay 100 merks, as being the due and accustomed allowance to the trumpeters for every Lord and Bishop at their obtaining of their dignity to be Lords of Parliament.

The suspender ALLEGED, That, albeit some of the bishops, by way of gratification, might have given the King's trumpeters what they thought fit at their entry; it cannot induce a burden upon the Order, nothing such being imposed by law or custom. For, albeit there be an Act of Parliament of the dues payable to the Lyon, by all temporal lords, at their erection; yet that Act mentions nothing of the bishops, being but for life, nor any thing of the trumpeters.

It was ANSWERED, That the dues of all offices of the kingdom are only by

their gifts in general, with all emoluments ; which are ever sustained as the emoluments are proven to be accustomed ; and the Act of Parliament anent the Lyon is not exclusive or prejudicial to the trumpeters more than to other offices.

The Lords found, That, if the payments made by the bishops were not ordinary and uniform, as a fixed due of 100 merks, they were not liable ; but, if it was a constant fixed duty, paid by all the bishops at their entry, and not by some more and some less, they sustained the libel, if it were so condescended, and allowed the pursuers warrant and diligence to adduce all evidents and adminicles thereanent.

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1681. *June 23.* CRAWFORD of ARDMILLAN *against* The LORD BARGENY.

CRAWFORD of Ardmillan, having charged the Lord Bargeny for payment of a sum contained in his bond ;—he suspended, and ALLEGED Compensation, and payment of a part.

Which being found relevant, and a term assigned ; at the calling of the act to circumduce the term, Bargeny produceth some writs ; and Ardmillan, by supplication, ALLEGED, That they had no contingency with the reasons, but were produced of purpose that the cause might go to the roll of concluded causes ; which would make a long delay ere it came in of course ; and, if any thing proper were produced, the desire of this decret would be for the superplus. Which being remitted to the Ordinary, he reported, That there was nothing had contingency but a compensation of 32 merks. Whereupon the question arose, Whether the charger, allowing that, should have decret for the rest, without abiding the roll.

The Lords found, That, when acts were called for circumducing the term, when any thing was produced, the Ordinary, before he made a great avizandum whereby the cause was concluded, ought to allow the other party a sight of the production ; and, if the other party was content to allow the same, and that there was a clear superplus, the Ordinary ought to discern for the superplus, if the party required the same ; and, if the party would not allow the partial production, make avizandum thereupon only ; but if the party suffered avizandum to be made *simpliciter* in the cause, the Lords would not consider the cause before it came in course : otherwise they would be necessitated to advise causes twice ; *first*, whether the writs were contingents ; and *next*, whether the writs proved : which were most inconvenient, and contrary to custom.

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1681. *July 14.* JAMES BARTHOLOMEW *against* MARGARET BARTHOLOMEW.

MARGARET Bartholomew having served an edict for choosing of curators before the Sheriff of Renfrew, James Bartholomew, her father, pursues advocacy thereof on this reason, That he, as father and lawful administrator, is the only