

1684. *January 16.* GORDON of ROTHEMAY, and ——— BARCLAY *against* COLONEL FULLERTON and LORD BOYNE.

GORDON of Rothemay and ——— Barclay, heretrix of Towie, his Lady, against Colonel Fullerton, and my Lord Boyne, who married the said heiress's mother, reported by Saline.

The Lords found that Colonel Fullerton, being the posterior tutor to the said Lady Towie, ought to have called her mother, (who was afterwards Lady Boyne,) her prior tutrix, to an account, notwithstanding she had obtained a decreet of exoneration of her office and intromissions; but, in respect of the decreet of exoneration, they remit to the reporter, before answer, to hear the parties on the articles of the condescendance of the pursuer's lesion (when minor) given in, and to report; and ordain the Colonel to produce the contract betwixt him and the Lord Boyne, and to condescend on the expenses at law depursed by him on the minor's affairs. *Vol. I. Page 260.*

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1684. *January 17.* ROBERT SANDILANDS *against* JEAN HERIOT, Lady Ramorney, and JOHN CRAIG.

ROBERT Sandilands, merchant in Edinburgh, against Jean Heriot Lady Ramorney, and John Craig, her son. The Lords, on Forret's report, decerned against the son; but, in regard he was a child, superseded all personal execution against him till he was 18 years old. And, for the Lady, found her letter produced contained no obligatory words against her, to make her liable for her husband's bond acclaimed; they being only spoken *impersonaliter, et in tertia persona*, that she hoped shortly course should be taken with her husband's debts, and desired him to forbear, but did not promise that she would take course with it; and therefore the Lords assoilyied her, in respect she was confirmed executrix-creditrix to her husband, on her contract of marriage, which was not fulfilled *aliunde*. *Vol. I. Page 261.*

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1684. *January 17.* ALEXANDER and CHARLES MAITLAND *against* RODERICK DAVIDSON.

THE competition between Alexander and Charles Maitlands, the macers, and Roderick Davidson, who had got a posterior gift of it from the King, as vacant by the deprivation of Alexander Maitland, the father, from all offices, upon the mint decreet, being reported by my Lord Carse;—the Lords reccommended to two of their number to endeavour a settlement.

In this process, Charles Maitland gave in a declinator against my Lord Register, that he should not vote, because he had procured that gift to his man Roderick Davidson. Charles having alleged he was conjunct *dominus* of the place with his father, and, on his deprivation, that his right stood good;—it was

ANSWERED, That they could not be both *domini in solidum*, per l. 3, § 4. *D. de Acquir. et Amit. Poss.*; and so the possession could not be both in the father and in the son. *Vol. I. Page 261.*

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1684. January 17. ——— GIBSON, MINISTER at AULDHAMSTOCKS, against The MINISTER of COCKBURNSPATH.

IN a debate between — Gibson, Minister at Auldhamstocks, and ———, Minister at Cockburnspath, as to the possession of vicarage and teind-herring; the Lords sustained a decret as a sufficient probation, though the other minister claiming right was not at all called thereto. *Vol. I. Page 261.*

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1684. January 17. The COMMISSARIES of EDINBURGH against The ARCHBISHOP of ST ANDREW'S and the BISHOP of EDINBURGH.

THE four Commissaries of Edinburgh pursue the Archbishop of St Andrew's and the Bishop of Edinburgh, for paying the locality imposed upon them, when the said Commissaries quitted (in 1609) the confirmation of the great testaments through Scotland, to the respective diocesan Commissaries, *viz.* £606 Scots. The question fell in between the two defenders.

St Andrew's ALLEGED,—The Bishopric of Edinburgh was, in 1633, erected out of his See, and with this quality, That the titular Bishops of Edinburgh should relieve him of a proportional part of that contribution-money; and that, by a decret-arbitral, in 1670, the Bishop of Edinburgh's proportion was declared to be the half, *viz.* £303; and that this Bishop's predecessors, *viz.* Wiseheart and Young, were in use of paying it 13 years; which was *triennalis et decennalis possessio*, and so was sufficient to liberate the Archbishop, a churchman, from that proportion.

ANSWERED for the Bishop of Edinburgh,—That the quota and proportion of the half imposed on his See was too great, considering the vast disproportion of the two Bishoprics' rents; and he denied the Commissaries were in possession; but, *esto* his predecessors had paid it, they being but administrators of the benefice, that cannot prejudge him.

REPLIED,—His erection is burdened with a proportion; and, *ex* § 1. *Intitut. de Societate*, where the parts are not defined, *præsumuntur esse æquales*.

The Lords, on this debate, found there was due to the Commissaries of Edinburgh, betwixt the two, £606; but, before answer, what part of this should be paid by the Bishop of Edinburgh, they ordained probation to be led of the Commissaries' possession, and their getting payment from the preceding Bishops of Edinburgh; and how long,—if the length required by the foresaid *regula cancellaria*; *item*, how much of the revenue and patrimony of St Andrew's was dismembered, taken off, and incorporated into the Bishopric of Edinburgh, that they might thereafter consider if the equal division of the total £606 between them was just and rational. *Vol. I. Page 261.*