

No. 2. 1741, Dec. 2. *A against B.*

THE Lords refused to sustain indorsations of promissory-notes, the indorsations not being holograph, and would not ordain the money to be paid on caution, and therefore passed the bill of advocation.

No. 3. 1751, Dec. 13. MONCRIEFF *against* SIR WILLIAM MONCRIEFF.

See Note of No. 52, *voce* BILL OF EXCHANGE.

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No. 2. 1735, Feb. 11. PATTISON, &c. *against* WILSON.

THE Lords refused the bill, and would not even find it relevant by the defender's oath that he paid no money for the discharge by the kirk-treasurer.

No. 3. 1736, Jan. 2. PROCURATOR-FISCAL OF EDINBURGH *against* CAMPBELL.

THE Lords found the libel proveable by the party's oath, and found that Campbell might bring Stewart as a witness to prove his exculpation or alleviation.

No. 4. 1738, Dec. 12. DR ARNOT *against* EL. YOUNG.

THE Lords seemed all to agree that a proof of cohabitation, and the defender's deliberately and solemnly, on several occasions, owning his marriage, especially where a child was procreate, was a habile way to prove a marriage, without a direct proof of the actual celebration, or of habit and repute in the sense of the law. They also agreed that the pursuer's sister and aunt would be habile witnesses for proving the actual celebration; but Royston and Arniston thought them not habile to prove this cohabitation and owning the marriage, notwithstanding the proof already brought that the pursuer enjoined secrecy to every body, and 2dly, that the witnesses already adduced referred to the sister and aunt as present at those meetings. But it carried by a great majority to approve the Commissaries' interlocutor, admitting them *cum nota*, and to refuse Dr Arnot's bill of advocation. *Me referente.*

No. 5. 1739, Nov. 27. BONTEIN *against* THE CREDITORS OF BUCHANAN.

THE Lords agreed that this Court must execute the sentences of the criminal Court, so far as is proper or competent to our jurisdiction; but as the sentence of the criminal Court in this case mentioned nothing of damages, they thought the verdict was no *pro-*

*probatio probata* of the breaking even of houses or of the theft, *me quidem renitente*. The President thought that it would be *probatio probata* against the party himself, but not against the creditors. But the other Lords did not seem to be of that opinion. However, they agreed that the interlocutor should be so expressed, that it is not *probatio probata* against the creditors, because that is the case before us; and having examined the particular testimonies, found they are not sufficient evidence of the fact.

No. 6. 1740, July 24. LEITH of Leithhall *against* GORDON.

See Note of No. 5, *voce* COMPENSATION.

No. 7. 1747, June 19. MRS KENNEDY *against* MRS JEAN CAMPBELL.

IN this most extraordinary case of the deceased Carrick's two marriages, we all agreed that Mrs Campbell having without challenge lived 20 years with Carrick as man and wife, and even owned as such by Mrs Kennedy; that Mrs Campbell has all the civil rights of a lawful wife and her children of lawful children; therefore we altered Arniston's interlocutor, and remitted with an instruction to allow Mrs Kennedy no proof, *rexit*. Arniston and President, because Mrs Kennedy might yet be prosecuted for adultery, and might suffer in her character which this might prevent; but reversed in Parliament 6th February 1749, and even given up by Mr Erskine Lady Carrick's counsel as untenable, as Mr Al. Ross her solicitor wrote. How different are the opinions of men in this mortal state!—28th July 1747.

In the case marked 28th July 1747, betwixt Mrs Jean Campbell, relict of Mr John Campbell of Mamore, and Mrs Magdalen Cochrane, relict of Kennedy, who pursued a declarator of her marriage with Captain Campbell of Carrick prior to Mrs Jean Campbell's marriage with him, Mrs Kennedy having appealed our judgment was of consent reversed 6th February 1749, and the Commissaries interlocutor allowing a proof before answer affirmed. That proof was accordingly brought on both sides, and the Commissaries found the defenders overt cohabitation with Carrick as man and wife from the beginning of 1726 till he went abroad in 1743 proven, and found the pursuer's prior marriage libelled not proven, dismissed her process, and found the facts proved by Mrs Jean Campbell relevant to infer marriage. The pursuer offered a bill of advocation, which with the answers was reported by Murkle, and the cause heard at the Bar two days, and we unanimously refused the bill. The President was not with us at advising, but was of opinion that the pursuer had not proved her marriage. She produced an acknowledgment of marriage holograph of Carrick dated 3d July 1724, but mentioned neither minister nor witnesses to the marriage, nor was the writing witnessed, but she brought a proof by two different witnesses but far from being unexceptionable of their having seen it before the time that the defender said she was married, viz. 9th December 1725, and also proved familiarities between them, such as Carrick's being secretly conveyed to her bed-chamber at midnight, and sometimes being with her all night. But there were many and violent presumptions against her.—19th June 1751.