

seldom knows in clandestine marriages whether he is a Minister or not. The Lords remitted with instruction to the Commissaries to allow the pursuer to prove all facts and circumstances of the cohabitation in Holland at the same time with the proof already allowed. *Pro* were President, Dun, Monzie, Murkle, Shewalton, Drummore reporter, *et ego*. *Con.* were Minto, Strichen, Kilkerran.

No. 10. 1752, Dec. 15. PENNYCUICK *against* GRINTON.

JOHN GRINTON having got Ann Penyuick with child under promise of marriage, she after her delivery sued him before the Commissaries, and specially libelled the fact, but concluded only for damages and the expenses of her delivery and maintenance of the child, and referred the libel to his oath. He compeared and deponed, and acknowledged both his proposing marriage to her at different times and the getting her with child. After which the process lay over for some time, and John Grinton privately married Ann Graite and brought her home to his house and lived with her as his wife. Upon which Pennycuick raised a new libel before the Commissaries, setting forth the fact as in the first, but concluding a declarator of marriage and next a divorce because of his adultery with Ann Graite; and Ann Graite raised a counter-declarator of her marriage. A proof being allowed, the Commissaries found the previous promise to Pennycuick and the getting her with child proven, and therefore found the marriage proven, and found also Ann Graite's marriage proven, but found that it could not compete with Pennycuick's prior marriage, and found John Grinton's adultery proven, and therefore divorced and separated Pennycuick from him, and found him liable in the expenses of her inlying and the child's aliment and expenses of process. Of this sentence a bill of advocacy was presented, which was this day reported by Drummore. The case is very well argued in the papers on both sides, and we refused the bill of advocacy *simpliciter*; *sed multum renit*. Dun *et* Kames, who thought that promise of marriage and *copula* did not make a marriage but only inferred an obligation to solemnize a marriage, and that the marriage with Ann Graite was a mad impediment, with which the President seemed both surprised and angry. But Woodhall also joined them.

No. 11. 1753, Jan. 2. MARY BURN AND HUSBAND *against* OGILVIES.

A CONFIRMATION in the Commissary Court was found no sufficient evidence of the death of persons said to have died, one in the East Indies, and the other in the West Indies, because no proof is required in these Courts as there is in all services, at least of habit and repute; but any person is confirmed *periculo petentis*; and therefore we adhered to Kilkerran's interlocutor finding that the pursuer must bring further proof of their death.

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PROPERTY.

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No. 1. 1734, Feb. 16. AITKEN *against* DEWAR.

THE Lords found the pursuer could carry on his level, and that the defender could not stop him.