

1667. *June 1.* The DEACON of the WEAVERS *against* The MAGISTRATES of EDINBURGH.

THE Deacon of the Weavers,—being imprisoned by the Magistrates of Edinburgh, because he had disobeyed their order anent the putting in their hand a box for the poor of the journeymen, until some questions betwixt the masters of the trade and the journeymen of the same should be decided,—did crave, by a bill, to be enlarged, upon that reason, That the craft had intented a reduction of the contract betwixt their predecessors and their journeymen, concerning the keeping and having a box for the poor of the journeymen: and that, until the decision of the process, the box ought to be kept by their deacon.

The Lords ordained the complainer to be enlarged, by consigning the box in the clerk's hands.

Upon occasion of the said process, it was agitated amongst the Lords,—Whether there could be a contract and transaction betwixt the craft and journeymen, who are not an incorporation, and cannot oblige their successors, seeing there can be no successors but of a person or incorporation.

But the Lords, without giving interlocutor upon that point, ORDAINED the reduction to be heard summarily.

Mackenzie. *Alt.* Lockheart. Gibson, *Clerk.*

*Page 29.*

1667. *June 14.*

CHEAP *against* PHILP.

Mr Cheap pursued a reduction of a disposition made by ——— Philp, in favours of Mr John Philp, upon these reasons, That it was subscribed by two notaries, and their subscriptions did not bear *de mandato*; and because one of the notaries was known to be of so great age, that he had not been for a long time employed as a notary, and that he had only subscribed his name; the rest of the solemn words used by notaries, when they subscribe *in subsidium*, being written by the other notary. Therefore another notary had been also used besides the two notaries. And that no respect ought to be given to his subscription, by reason it was *ex intervallo*, and not *uno contextu*. 2. That the disposition was *in lecto*.

The Lords, when the case was reported, debated upon the first reason, and, in special, upon these points: 1. Whether, in subscriptions *in subsidium* by notaries, it be essential it should be expressed that they subscribed *ex mandato*; and, if that solemnity may be supplied, by offering to prove that the notaries were *rogati*.

It was URGED, That minutes and abbreviations of seasines might be extended and transumed, though none of the ordinary solemnities be expressed; and therefore such defects and omissions may be supplied.

It was ANSWERED, That, in abbreviations, *omnia præsumuntur solemniter acta*; but, when an instrument is complete, or any other writ, if it want the ordinary solemnities, they cannot be supplied: *et solennitas non præsumitur*; and, being only probable by the writ itself, it cannot be made up by witnesses.

2. It was DEBATED, Whether a father, or grand-father could be notary in a writ or right in favours of the son, or grand-child.

The Lords did demur upon these points; and thought fit, that before answer as to these, the reason founded on *lecto* should be discussed.

Page 34.

---

1667. July 15. ————— against —————.

EXHIBITION being pursued by an apparent heir, to the end he may advise, not only as to the writs in favour of the defunct, but such as were granted by him:

The Lords superseded to give answer as to the last member, until they should consider the Act of Sederunt; it being alleged by some of the Lords, That, by an Act of Sederunt, it was ordained, that no person should be forced to exhibit writs granted by defuncts in favour of himself, or his authors; except writs granted by parents, or husbands in favour of wives and children.

Page 38.

---

1668. January 7. SIR JOHN HOME against The FEUARS of COLDINGHAME.

IN a process at the instance of Sir John Home of Rentoun, Justice-Clerk, against the feuars of Coldinghame; the defenders offered to improve the executions.

It was ANSWERED, They could not be heard, unless they would propone the said allegiance *peremptorie*; but that the same should be reserved by way of action.

The Lords, for avoiding the multiplying of processes, obliged them to propone the exception of improbation *peremptorie*: but the same being *prior natura*, and competent to be proponed before any other *in meritis causæ*; and yet being now proponed *peremptorie*, in form of process, being the last of exceptions; —The Lords admitted the defenders to propone their other exceptions, and reserved that to the last place.

Page 52.

---

1668. January 15. M'KITRICK against —————.

THE prescriptions of reversions and expiring of legals, and the taking advantage of the same, are so odious; that the Lords inclined to find, that necessary debursements upon reparation of houses should not be allowed to a compriser, in a declarator to hear and see it found, That he was satisfied by intromission; reserving action to him for the same: But, before answer, they ordained the reporter to consider the debursements, and to report whether they were absolutely

Z z z