liberate him from a spulyie. The chapman was content to restrict the spulyie to vitious intromission, providing he gave *juramentum in litem.*

The Lords found the libel ought to be restricted; but in respect the pack was closed, and so delivered to the defender, and only depositat *custodiæ causa*, and not impignorat, and that it was impossible to prove the libel otherways nor by the pursuer's oath, they allowed him *juramentum in litem.* This may seem strange, how the Lords could allow this kind of oath, which is only in spulyies, and in no other actions, and which *extra* that particular case is not approven in law; being *juramentum affectionis*, and not *pretii et valoris.* But the Lords reserved the modification to themselves, at the advising of the cause.

Act. Dinmuire. *Alt.* Mackeinzie and Colvill.

Advocates' MS. folio 56.

1667. *January* 8. TYRIE *against* OGILBIE of Milnetoune.

THE case was thus: Park being debtor to David Tyrie in L.1000, and having purchased an assignation to a debt owing by Ogilbie of Milnetoune to John Rynd; and of the which debt, Park, by a bond of relief, was bound to relieve the Laird of Milnetoune; and Park having taken the assignation blank, he fills up Tyrie's name in it; who, charging Milnetoune to pay the sum, he suspends on this reason,—That the assignation was procured by the means and moyen of Park, and delivered to Tyrie blank, who filled up his name in it; and so being procured by his means, he offered to instruct instantly by writ that Park was obliged to relieve him of it.

The Lords found, where bonds of relief are granted by parties who thereafter purchase blank assignations to the same very debts which they are bound to relieve, that these assignations, though delivered to creditors for causes onerous, yet that they are in the same case as if they were in the person of him who is obliged in relief.

This may seem strange, that the assignee, who is creditor, and possibly *bona fide* granted discharge to the party from whom he got the assignation, should be prejudged by his fraud and cheat; but it seems to have much equity in it, and tends much to discourage fraudulent conveyances of rights, which both judges and lawyers ought mainly to regard.

Act. Dinmuire. *Alt.* Seaton. *Advocates' MS. folio* 57.

1667. *February.* PURVES *against* LORD COLVILL.

MY Lord Colvill holding his lands ward, and *moribundus et in lecto*, precipitates the marriage of his heir, that the casualty of the single avail thereof may not fall to the king and his donator; whereon Sir William Purves raises an action against this Lord, after the old Lord's decease, for the avail of his marriage.

ALLEGED,—The same did not fall, seeing by the law the marriage only falls when the apparent heir was unmarried the time of the vassal's decease.

REPLY,—Though it be true that the feudal law is such, yet both in law, reason, and practique, (Skene, *in notis Latinis ad cap.* 91 *Quoniam attachiamenti,)* where the vassal *dolose* precipitates his apparent heir's marriage, when he is on death-bed, his dole cannot prejudge the superior, since there ought to be the greatest faith and honesty betwixt vassal and superior imaginable; and therefore the precipitation makes it as if it had not been done, being done fraudulently as said is. *Vide February* 1676, *No.* 471, *parag.* 7. There were no practiques produced for the case, only one in Skene's time, and another in Balfour's time; and Craig (tit. 52, cap. 15, page 301, *in initio)* was alleged for it. However, the Lords found the reply and libel relevant.

The Laird of Ruthven's case differed something from this; for though young Ruthven was married that same day his father died, yet there was a previous treaty and articles agreed upon when the old Laird was in perfect health; and the suddenty of his sickness occasioned the precipitation of the marriage, though agreed and resolved on before. This was not decided. But these cases were never drawn in question before this time, and precipitations of this kind were ordinary to shun the falling of the marriage; and it is very like the Lords would not have sustained it, if there had not been produced former decisions of the case.

And since all thir, there is another case emergent, not unlike, which is:—Jo. Kinlock dispones the lands of Jourdie to his son David, who is not married, and resigns in the superior's hands, and on the morrow after he dies; but was not infeft. For since the law is, that the marriage of the apparent heir is only due, and if the heir be infeft before the vassal's decease, it saves the marriage; the question will be, if the precipitation of an infeftment proceeding on the vassal's resignation when he was *moribundus*, will undergo that same fate before the Lords as the precipitation of the marriage. But this case is not tabled yet.

Advocates' MS. folio 57.

1667. *January* 31. LYELL *against* ——.

SOME Merchants in Dundee, having sold to Spruce, Englishman, 60 tons of wine, for which he paid L.30 Sterling, in part of payment, and took their receipt relative to the bargain. They draw bills of exchange on him for L.120 Sterling, but without relation to the bargain. Spruce, before payment of the rest of the price, absents himself, and assigns the bill of exchange as if it had been a bill of credit; and the drawers being convened for payment, ALLEGED the cedent was debtor *ab ante* to the drawers for the price of wines; which was found relevant: so that the question was, how this debt should be proven against Spruce; for the merchants neglected to take writ of him, and the bills had no relation to the bargain.

ALLEGED,—That it being betwixt merchant and merchant, *lege mercatoria* it must be proven by witnesses. On the other hand CONTENDED, it being a bargain of importance of L.1000 Sterling, the same, of the law, cannot be proven