

thought these words will not comprehend them. *An caligæ veniunt nomine vestimentorum*, see Calvin's Lexicon, *v. Caligæ*. *Vol. I. Page 27.*

1678. *December 6.* CLACKMANNAN'S CREDITORS competing.

IN the competition between the creditors of Clackmannan, the Lords did not indeed decide it, but inclined to find, that their equal presenting of their signatures of confirmation of their base infeftments to the Exchequer on the same day that Alexander Miln presented his, did not bring them in *pari passu* with him, unless they had taken instruments upon their presenting thereof judicially: which difference seems very strange, and not to be required by 66th Act Parl. 1578, declaring, that the King and his compositors ought not to deny confirmation to any that seek it. Yet Hope, in his *Min. Pract. tit. 10, Of Appryings*, § 11, seems to require taking of instruments. But here they were so boasted and over-awed by the Duke of Lauderdale's presence, who owned Alexander Miln, that they durst scarce take instruments.

In 1673, in the case of Hugh Sinclair of Binny and his Creditors, the Lords found the presenting of a signature to the Exchequer equivalent to a charge given to another superior.

It was likewise sustained to Bruce of Powfouls, who was cautioner in a great many debts for Clackmannan, that he was infeft about the same time with Miln, and raised his summons for pointing the ground and maills and duties before the Lords, and executed them that same day that Miln obtained his decret before the Sheriff of Clackmannan. This diligence was sustained by the Lords to bring in Powfouls *pari passu* with Alexander Miln. *Vol. I. Page 27.*

1678. *December 7.* WESTGAIRTH and his FACTOR *against* MICHAEL SEATON.

WESTGAIRTH, an Englishman, and his factor, charge Michael Seaton in Burntisland. The Lords sustained compensation upon Westgairth's ticket of receipt of the potashes; albeit it was alleged that the price of them was not liquid, *nec constabat* what kind they were of, there being some potashes near the double rate better than others. Yet the Lords received it, because *de proximo poterat liquidari*, *L. ult. C. de Compensat.* And named Bailie John Hall, and Robert Douglass, soap-boiler in Leith, to depone what the cask or barrel of potashes at that time was worth; and declared they would modify accordingly: which is a very rational method in such cases, and they followed it in valuing the goods of the Calmer ship, &c. *Vol. I. Page 27.*

ANENT MINISTERS' STIPEND, payable furth of BARONIES.

I WAS at this time informed of a case that happened, in 1666, to be decided betwixt the Creditors of Balcomie, thus:—A minister has a decret of locality, appointing so much of his stipend to be paid furth of such a barony, it being

then all in one hand. It comes thereafter to be dismembered, and in sundry hands. The minister pursues one of them for the stipend due furth of the whole.

He ALLEGED,—He was only liable *pro rata portione*, conform to his teinds, and that the most he could be obliged in was, *dedere ipsa corpora* of the teinds; for stock pays not ministers' stipends. Yet it is affirmed, the Lords found him liable *in solidum*, reserving his relief against the rest for their proportional possessions; since the minister *ab initio* had to do with but one: and if, *ex post facto*, by alienations unknown to him, and without his consent, it came to be divided, he who is *persona in jure favorabilis*, must not be distracted from his function to convene all: and the whole barony was made liable by decret of locality, and so *unaqueque globa servabat*; and the stipend was in this like the soul, *tota in toto, et tota in qualibet ejus parte*. And such a quantity being imposed on the barony, it was without respect to the teinds more than to the stock; and, in this case, both were confounded and consolidated together. Yet, in law, the teinds seem to be the proper and specific subject-matter which can only be affected with ministers' stipends. Act 10, Parl. 1567. See Durie, 20th Dec. 1622, *Preston*.
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1678. December 12. GAIRDEN against GAIRDEN, her Husband.

A BILL of advocation was presented to the Lords of Session, of a process of divorce upon adultery, pursued before the Commissaries of Edinburgh, by one Gairden, against Gairden her husband, in regard of some irregularity and informality in the Commissaries' procedure, in examining of witnesses before liti-contestation.

The Lords refused the bill, and remitted it back to the Commissaries, as the only judges competent to such actions in the first instance; but if they had found any irregularity, the Lords would have rectified the same, and sent it back to the Commissaries; as they have done in the case of services of brieves, and the like. See an example of it in the case of *Fork* and *Fyfe*, July 1673. *Item*, in advocations from the Admiral Court, June 1673, [No. 391.]

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1678. December 12. REPRESENTATIVES OF WILLIAM KAY against CLEGHORN.

IN a cause pursued by the executors and representatives of William Kay, late bailie in Edinburgh, against Cleghorn a baxter there, before the Commissaries of Edinburgh, for payment of a debt which they referred to his oath; he deponed, it was true he was once owing that debt, but it was as true he had paid it, but only the sum of yet resting. This being advised by the Commissaries, they repelled the quality of payment, and ordained him to prove it *aliunde*.

This being quarrelled upon iniquity, before the Lords, in a suspension, they found the quality intrinsic, and assoilyed, and would not divide the oath. See