

1674, that a brother nor no other *in linea collateralis* could be convened as successor *titulo lucrativo post contractum debitum*, but only he who was *alioqui successurus necessario*, and not only *probabiliter*. See *February 1670, Whitefoord*; and *February 1674, Lothians*. *Vol. I. Page 30.*

ANENT MULTURE of BEAR.

I SAW a decision dated *3d July 1673, Oliphant against Oliphant*, where the Lords found that bear behaved to pay multure, though it tholed not fire and water. *Vol. I. Page 30.*

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1678. *December 20.* The TOWN of GLASGOW *against* SHAW of GREENOCK.

IN the action between the Town of Glasgow and Shaw of Greenock, the Lords having considered the Act of Parliament 1672, Anent the Privileges of Burghs Royal, They found, if the royal burghs do not seize the unfree goods, they can have no action for the value of what they can prove was sold and vented by unfree-men, unless they had either apprehended them, or used arrestment; in which last case, though the said unfree commodities be out of their hands, or consumed, yet the Lords will hold the unfree-men *pro possessoribus, quia dolo desierunt possidere*. *Vol. I. Page 30.*

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1679. *January 1.* MURRAY of SKIRLING *against* MR BUCHAN, his Minister.

THE Lords, upon occasion of a bill given in by Murray of Skirling against Mr Buchan his minister, in a process between them, made an act of sederunt anent the clerks their minuting of defences, *viz.* to pass over all dilatory defences, unless they be sustained, and to write all immediately upon the process, and not upon scrolls and books apart, out of which they afterwards extend them. This act was thought impracticable; and by this way it cannot be known what was competent and omitted, and what was repelled. *Vol. I. Page 30.*

ANENT PACTIONS *CONTRA FIDEM TABULARUM NUPTIALIUM.*

ANENT Pactions *contra fidem tabularum nuptialium*,—see June 1677, *f. 288*, and *Donald Foulter's case*, in Mack. Observ. on Act 21, Parliament 1621.

A bond granted by a wife after a contract of marriage, or proclamation of banns, is reputed *stante matrimonio*: as was found in *Lady Bute's case*; *ergo*, a bond granted by her future spouse to her at that time is *in pari casu*. See *June 4, 1679, Ewart*. *2do*, Bonds granted *inter sponsum et sponsam in æstro amoris*, are more to be reputed donations, and more exorbitant than what are given after the marriage; there being a greater eclipse of the use of reason at that time then afterwards. *3tio*, It is *contra fidem tabularum nuptialium*. Anent donations *inter virum et uxorem*, see *Durie, 17th July 1632, L. Borthwick*; *et infra, 18th December 1679, de Pacto Proxenetico*; and *8th January 1680, Raeth*.

The Lords have found, at least inclined to find, deeds granted betwixt a contract and a marriage are not to be construed as revocable donations *inter virum et uxorem*, between *Home* and *Home*; and the reason of circumvention, *super astro amoris*, was debated, but not decided, between *Ranken* and *Reed*, in 1677-. And the Lords reduced bonds *contra pacta nuptialia*, not only in *Donald Fowler's* case, but likeways in the case of *Lockhart of Wicketshaw* against

where they were entered into by parties that were under the power of their parents living, without their consent. But if both parties were *sui juris*, and their parents dead, *quid impedit* but they may enter into new pactions? See *Arbuthnot* against *Knor*, 15th December 1660. Vol. I. Page 31.

1679. January 9. ISOBEL KINNAIRD against LYON.

IN an exhibition *ad deliberandum*, Isobel Kinnaird against Lyon,—ALLEGED,—Offers to prove the pursuer is a bastard, at least the person by whom the contingency of blood is derived is a bastard, at least was so holden and reputed, (which is sufficient *in re antiqua*;) and so she has no interest to crave exhibition, since she cannot be heir. This was sustained as relevant. *De probanda filiatione per indicia et conjecturas*,—see *Mascard. de Probat. v. Filius*.

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1679. January 10. ALEXANDER AUCHMOUTY against The EARL of DUMFERMLINE and his TENANTS.

MR Alexander Auchmouty pursues the Earl of Dumfermline and his Tenants. ALLEGED,—The process being raised in the last Earl's lifetime, it ought to be transferred against this Earl. The Lords, upon the report of Newbyth, found no necessity of transferring, because the pursuer was insisting against his own tenants; and Dumfermline's procurators had proponed an exception of payment; and now to allege that it ought to be transferred, was to propone a dilator after a peremptor, which is against all form: and his brother was only called *pro interesse*. See Dec. 1677, *Dumfermline*.

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1679. January 10. ANTONIA PIERONNIN and THOMAS WILSON, her Factor, against JANET GORDON, Relict of Morison of Pitfour.

ANTONIA Pieronnin, and Thomas Wilson her factor, (*vide* 8th Dec. 1677, p. 205,) having obtained a decret against Dame Janet Gordon, relict of Morison of Pitfour, as representing her husband upon the passive titles, being holden as confessed thereon; the Lords reponed her again to her oath, in a bill of suspension, and ordained her to depone anent the passive titles; and that her present husband's protestation against her deponing to his prejudice should not hinder the same.

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