

1696. *February 29.* LAURENCE RENTOUL *against* NATHANIEL FIFE and JOHN WHITE.

LAURENCE Rentoul having been fined in 300 merks by Mr Nathaniel Fife, sheriff-depute of Perth, and John White, his procurator-fiscal, in the late times, for conventicles and other church irregularities; he pursues them on the new Act of Parliament, for repetition. ALLEGED for the fiscal, That though he granted the receipt of the money, conform to the discharge produced, yet the decret bore expressly, to pay it in to the fiscal, for the use and behoof of the sheriff-depute: whereupon the Lords assoilyied him. ALLEGED for Mr Nathaniel, That he denies he ever received it, or, if he did, he counted for it to the Exchequer.

The Lords thought his own decret did bind the receipt on him; and it not being the fine of an heritor, but a tenant, he was not countable to the Exchequer for it, but it belonged wholly to himself, by the Act of Parliament 1672; and therefore they decerned against him, reserving his relief against his fiscal, or any who shared in it, as he should instruct the same, as accords of the law.

*Vol. I. Page 717.*

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1696. *February 29.* WILLIAM SMITH *against* His CREDITORS.

THE *cessio bonorum* of William Smith, with a dispensation for his wearing the habit, was passed; and sundry others were refused. *Vol. I. Page 717.*

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Many other cases might have been inserted here; but they were either such as were plain, or parallel with those already marked; or which did not come up to some precise abstract point in law, but, being involved in circumstances of fact, could not be so easily adduced, and applied to enforce and illustrate other cases, or be rules for the Lords' decisions hereafter; the same cases rarely occurring, invested with the like circumstances, so as to determine the Lords to follow them as practicks for the future. What makes the *auctoritas rerum judicatarum* more uncertain, and renders the following or receding from prior decisions arbitrary, is the difficulty which judges find of balancing aright, if the diversity of circumstances of the case in hand, from a former decided case, be sufficient in themselves to influence, occasion, or introduce, a diversity or alteration in the determination and decision of the present debate. Or if they be not of that weight, moment, and relevancy, as to cast the balance, and difference the case from the former, or alter the