

1696. *December 11.* WILLIAM LAW and CHRISTIAN WHITE *against* JOHN GIBSON.

I REPORTED William Law and Christian White, against John Gibson, merchant in Edinburgh, who having married Agnes Law, daughter to the said William and Christian, there are no contractors with the said John, in his contract-matrimonial, but the said Agnes, and Christian, her mother, for £1000 Scots of tocher, in regard the father had for many years separated from his wife, and lived at London; and, by a clause of the contract, it was provided, That if there should be no bairns surviving of the marriage, then 500 merks of the tocher should return to the wife's nearest of kin. The marriage dissolved by the wife's death; and William Law, the father, pursues John Gibson, before the Sheriffs of Edinburgh, to restore the whole tocher, in regard it was paid out of his means, by his wife, without his knowledge and consent, which she could not do. The Sheriffs allowed him 500 merks as a complete tocher, and decerned him to pay the remanent 1000 merks; as also to restore some household-plenishing his wife lent her daughter, conform to a declaration, under her hand, acknowledging the borrowing.

This decret being suspended, John Gibson insisted on thir reasons,---That it was generally believed her husband was dead; and she gave herself out for a widow; and he had been many years absent; and he was *in bona fide* to contract with them. Besides, his wife had a *separatum peculium* of her own, having traded and kept a shop before her marriage, and so it might be out of her own means; and her declaration cannot militate against him to infer any ground of debt upon him.

The Lords, before answer, allowed a probation, That, at the time of the marriage, the husband was holden and reputed dead, and she gave herself out as his relict; and that the daughter kept a shop apart and traded, and whether the mother furnished her with the merchant-ware or not: And found the wife's declaration not probative against the husband; but allowed them to astruct, or adminiculate the same by his oath, or *prout de jure* by witnesses, that the plenishing was only lent.

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1696. *December 11.* CAMPBELL of LOCHDOCHART *against* MR DUNCAN ROBERTSON.

CAMPBELL of Lochdochart gave in a complaint against Mr Duncan Robertson, that he had apprehended him with caption, notwithstanding he had the Lords' protection to appear and depone in a cause. Mr Duncan ALLEGED,---His caption was not for any debt, but to produce some writs and depone in an action at his instance; which was no breach of the Lords' protection, seeing it is a fundamental law in all government and societies that every one ought to bear witness to the discovery of the truth; and no protection can liberate a man from that natural obligation.

The Lords thought Mr Duncan should have applied to them for a warrant to