

1634. *February 11.* JAMES ROLLOCK *against* The LADY ATHOLE and CAPTAIN ROLLOCK.

THE Lady Athole, and Captain Rollock her spouse, are charged, by James Rollock, to make payment to him of the sum of £1000, contained in a registrate bond. She suspends, seeing the sum was borrowed to her from umquhile _____, and that the bond was blank when she delivered the same to _____, and that this charger had only inserted his own name in the bond, whereas the money pertains to the defunct's husband; whereby his procurator compeared for his interest, and concurred with the suspender, that the monies were due to him, husband of the defunct. It was answered, That the charger received this bond from the defunct, in her lifetime, for onerous causes; and that she not only caused insert his name therein, but also made him assignee to the same; and that she and her husband being separate by consent, he gave unto her the sum of 4000 merks, whereof this was one part, to live upon, and to renounce her conjunct fee. It was answered, That the separation being voluntary, no private contract betwixt them could prejudge the husband of the right of any sums pertaining to his wife undivorced. Which the Lords found relevant, and thereafter suspended the letters.

Page 18.

1634. *February 13.* EDGAR *against* The EARL of HADDINGTON'S BAILIE.

THE Earl of Haddington's Bailie convicts one Edgar for a bloodwed for wounding a person; who, being charged for an unlaw, suspended, alleging, That he was not lawfully convicted, in so far as he was not convicted by an assize, as use is in such cases; but, the fact being referred to his oath, he refused to give his oath. The Lords found the letters orderly proceeded; because the fact not being capital, but punishable by a pecunial pain, the same might be lawfully referred to his oath.

Page 18.

1634. *February 15.* The GOODMAN of MUNKTOUNE *against* LORD YESTER.

THE Goodman of Munktoun, having comprised or gotten adjudication of certain lands holden of the Lord Yester, charges the said Lord to enter him thereto. The superior for the entry craves a year's duty of the said lands, extending to £1000. It is answered, That thir lands being feued, before the Act of Parliament, to a vassal for the sum of £24 of feu-duty; and, by the comprising or adjudication, the Goodman of Munktoun having right to no more but to the said feu duty,—he could not, of law, be subject to pay any more to his superior for his entry; and alleges a practique, wherein the like was decided betwixt

the Laird of Teilling and the Earl of Nidsdale, *anno* 1631. The Lords decerned conform to the said practique.—15th *February* 1634.

It was farther alleged, That the Lord Yester behoved to have the full avail of the lands, for his entry ; because the person's liferent, who was vassal to the Goodman of Monktoone, was fallen in his hands, and he had componed with him for the same. The Lords found, That this casualty of Munktoone's vassal could not be profitable to the Lord Yester, superior to Munktoone.

Page 41.

1634. *March* 14. CHRISTIAN HOOME *against* ANDREW GIBB.

ANDREW Gibb married Christian Hoome, a widow ; and, by contract of marriage, her whole moveables and sums being contracted to him after the marriage, she diverted from him, by persuasion of her first husband's bairns, and menaced to put hands in herself, except the husband discharged the contract of marriage, and reponed her to dispone upon all the gear that she brought with her at her pleasure. Whereupon, by advice of both their friends, a new contract was drawn up, whereby the first contract was discharged, and each party got power to dispone upon their own gear. Notwithstanding, after the wife's decease, the husband takes a dative *ad omissa*, in the person of another, and pursues Andrew Gibb for such part of the goods as would have fallen to the wife. He excepts upon the later contract made by advice of friends. It was replied, That this contract was unlawful and null, being *inter virum et uxorem stante matrimonio*, and could not subsist but so long as the wife lived. It was answered, That this was *donatio remuneratoria*, and, not being revoked by the wife during her lifetime, was ratified by her death, as also by her, in her own time, before a judge. The Lords found the exception relevant, founded upon the *donatio remuneratoria* contained in the last contract.

Page 268.

1634. *March* 18. ORE *against* WATSON.

IF three sisters be apparent heirs, and the father dispone his heritage to one of the three, and appoint her to give certain sums of money to the other two, a creditor pursues her to whom the lands were dispone as successor to her father *post contractum debitum*. She alleges, That her other two sisters ought to be pursued as well as she, seeing they got benefit by their father. To the which it was replied, That none can be pursued as successor but those who succeed to lands or heritable right ; and not they that obtain provisions of monies. Which