

1679. *November 29.* ROBERTSON *against* HOME of ECCLES.

IN a case, Robertson against Home of Eccles, Marcus found an apparent heir's voluntary paying annualrent for a sum owing by his father's bond, (to whom he was not otherwise heir,) was not such a passive title as to be a homologation by entering in use of payment, or to lay an obligation upon him to pay the rest of it, (which would have bound him to annualrent, if it had been his own bond not bearing a clause of annualrent, or if it had been granted by him in his minority, and he had paid annualrent for it after his majority, for that would have tied him;) for his civility ought not to make him liable to pay the rest of the debt; much less then can it be an argument for other creditors to crave payment thereon; for an apparent heir may voluntarily pay one, and not another. See Dury, *26th January 1628, Commissary of Dunkeld*; and *penult. July 1630, Johnston.* *Vol. I. Page 66.*

1679. *December 6.* JOHN BEATON, Minister at Ayton, *against* —————.

MR John Beaton, minister at Ayton, pursues a spuilie of his horse feeding upon grass designed to him by the bishop, upon a visitation, for pasturage of two kine and a horse, conform to Act of Parliament.

ALLEGED,—The designation was null, and the heritors not called. ANSWERED,—It stands unreduced. Farther ALLEGED,—It was the heritor's own grass, till the minister had obtained a decreet for that grass upon his designation; and so he might poind the minister's horse.

The Lords found it a spuilie, and decerned largely for the price of the horse. *Vol. I. Page 67.*

ANENT CONJUNCT PERSONS.

It was debated before the Lords, whether a cousin-german, or a cousin-german once removed, receiving a disposition from a bankrupt, is to be reputed such a conjunct person as is meant by the Act 1621; for they may marry together, and the relation, as to the design of the Act of Parliament, must stop somewhere.

It is affirmed the Lords found a cousin-german such a conjunct person. See Mackenzie's Observes on that Act. *Vol. I. Page 67.*

1679. *December 10.* The EARL of WINTON *against* The PROCURATOR-FISCAL of LINLITHGOW.

IN the suspension by the Earl of Winton of the Procurator-Fiscal of Linlithgow his charge; it went to interlocutor, if a blanch vassal of his Majesty's, having his lands *pro omni alio onere, &c.* without a special citation or warning, requiring him to be there present, be obliged to answer at the sheriff head-

courts. I think he is not. See this agitated at great length in my Observes upon the Act of Parliament made in 1672. *Vol. I. Page 68.*

1679. *December 11.* THOMAS WILSON *against* WILLIAM BROWN.

THE debate betwixt Thomas Wilson and William Brown being reported, the Lords reponed William Brown, against the decreet, to his oath, or allowed Thomas Wilson to prove his account by witnesses; and decerned Brown to pay to Wilson £20 Scots, as the expense of his decreet, which is now turned into a libel. *Vol. I. Page 68.*

1679. *December 16.* ANENT BLANK WRITS.

ONE charges upon a bond: compearance is made for a third party, and he ALLEGES the bond was granted originally blank in the creditor's name, and was so delivered to one who was his debtor; and he had arrested the money before this charger's name was inserted in it; and he offered to prove this by the writer and witnesses.

ALLEGED,—The bond being in the charger's name, it could not be taken away but only by his oath, or a writ under his hand. Yet the Lords, before answer, ordained the principal bond to be taken out of the register, that, after inspection, they might consider whether or not the creditor's name had been blank in it *ab initio*, and was filled up since with a different hand and ink; or if it was all one context. And ordained the creditor charger to give his oath of calumny when his name was filled up therein, or the same delivered to him. And thereafter ordained the writer and witnesses to be examined, to expiscate if there was any fraud. But this was judged by some a hard and dangerous interlocutor. *Vol. I. Page 69.*

1679. *December 18.* ANENT PACTUM PORXENETICUM..

It was debated whether *pactum proxeneticum* was lawful, seeing it was done *in æstro amoris*, which is a kind of fury, and *gesta in furore non tenent*; but *æstrum amoris* is not so known in law as to be a ground whereon to quarrel what is then done, else all matrimonial provisions might be quarrelled. See *Benevent. Stracca de Proxenetis*; and Harprecht. *ad § 1, Inst. de Inoff. Test.* But I think there will be little doubt that a curator ought to seek no reward for procuring a good marriage to his minor. *Vol. I. Page 71.*

1679. *December 19.* The COUNTESS of CASSILS *against* The EARL of ROXBURGH.

IN an action betwixt the Countess of Cassils and the Earl of Roxburgh, an arrestment was quarrelled as null, because it was not personally done, and yet bore not six several knocks to be given at the most patent door.