

Against the feminine testimonies, I represented, from Cavalcanus *de Test.* and others, the several reasons lawyers give why it was reprobated in law, and the difference of the cases of *puerperium et partus suppositus* and lese-majesty, wherein women were habile witnesses, from this. As for his father's oath, no respect ought to be had thereto; 1^{mo}, Because ultroneous, and taken without any warrant for it. 2^{do}, *Extra territorium*, being taken in Alnwick in England. 3^{io}, A father is not *idoneus testis contra filium*. 4^{to}, He may lose or win in the cause, because, if the Master prevail in his reduction, Provost Currie will recur against my Lord upon the warrandice. 5^{to}, If it were proper betwixt so near relations, the Master could show most unnatural usage of his father to him. *Item*, Provost Currie's witnesses have deponed upon a son's age, elder than the Master near two years, who was likewise called James; which has given rise to their mistake; and it is credibly informed, that some of them were bribed. As his minority is proven, so his lesion is more palpable than needs to be instructed.

It was ALLEGED for Provost Currie,—That the Master could never pretend minority; because they offered to prove, that, at or before the date of the ratification quarrelled, he had judicially sworn that he was major; which, albeit *res inter alios acta*, yet he can never come against it. *Vide Tit. C. Si minor se major. dix.*

The Lords ordained the said judicial oath to be produced, whereby he had asserted himself major.

If Provost Currie count for the rent which these lands paid when he entered first and got his tack, he will be found paid by his possession; but he hath suffered the rent to diminish and fall exceedingly. See 11th and 13th December 1677, *Oliphant*. See thir parties, 10th January 1680.

Vol. I. Page 51.

1680. January 10.—The affair betwixt Provost Currie and the Master of Mordington was this day decided, (*Vide* 12th July 1679,) and the majority was found proven.

Vol. I. Page 74.

1677 and 1680. DAVID MOREIS against ORROCK of BALRAM.

1677. June 20.—IN a competition between real rights betwixt David Moreis, merchant in Kirkcaldie, and Orrock of Balram, a comprising was quarrelled as null and unformal; because the bond whereupon the apprising was led, bore, that the one half of the sum should not be payable till after the debtor's decease: now the apprising was led for all, and no previous trial taken that the debtor was dead.

ANSWERS,—Offers to prove yet, that the debtor was dead ere the comprising was led, and so the term of payment of the second moiety was come.

The Lords, on Gosfoord's report, found that enough, without a previous cognition, to sustain the apprising as a real right, and give it preference so far as concerned principal sum and annualrents, and necessary expenses, but not as to sheriff-fees or penalties, or the elapsing of a legal; and so restricted it. See 31st January 1679, *Irving of Drum*.

Advocates' MS. No. 577, folio 286.

1677. *July 21.*—The registration of a bond was found null, with the inhibition, horning, apprising, and all the other diligence used thereupon, in Moreis and Orrock of Balram's case; because it was registrate within the books of Kirkcaldie, without the jurisdiction where the granter lived, and so was *forum incompetentens* to him; and so the extract made no more faith than a mere copy.

The Lords are turning very strict in explaining clauses of registrations now. *Vide supra, February 1674, Douglas against Parkhead, No. 442, where the Lords slighted this irregularity. Advocates' MS. No. 610, folio 294.*

1680. *January 13.*—The action Orrock of Balram against Morris in Kirkcaldie (20th June 1677,) being reported by Lord Pitmedden; the Lords, in relation to the third and fourth apprisings, led at the instance of John Morris himself, adhered to their last interlocutor, of the 23d Jan. 1678, whereby they found Orrock of Balram free of the termly failies, but liable to the penalties of the bonds and sheriff-fees in the comprising; (for, by the Act of Parliament 1621, these are due to apprisers, and so the Lords cannot modify nor restrict them, unless there be an informality in the apprising.) But ordain the parties' procurators to be further heard upon the blank ratification produced; as likewise to be further heard as to the apprising led by James Hamilton.

Upon a second report made on the 15th of Jan. thereafter, bearing that the ratification did only relate to the third apprising, which is the first of John Orrock's two apprisings; therefore the Lords adhere to their former interlocutor as to that apprising, and sustained the fourth apprising only for the principal sum, and necessary expenses the party was at: and ordain the parties' procurators to give in an account of the necessary expenses the appriser was at, both as to that apprising and the other apprisings which are restricted to principal sums and annualrents, with power to the reporter to modify the same as he shall find just; notwithstanding of any former interlocutor, appointing ten or fifteen *per cent.* to be modified as expenses.

And the Lords declare, they will hear the parties' procurators upon that point, in relation to the comprising led at the instance of Hamilton, in their own presence, anent this objection, *viz.* That the debtor cannot allow the expenses thereof; because Douny, cedent to the said James, having led an apprising for the same debt, James ought not to have accumulated expenses upon the debtor, by leading a second apprising for the same sum; and so it cannot be allowed to Morris, though he be only a third party deriving right from James Hamilton.

They had formerly sustained this nullity, objected against the other apprisings, that the bonds were registrate in a jurisdiction, *viz.* Kirkcaldie and Burntisland, in which the debtor dwelt not. *Vide 21st July 1677.*

Vol. I. Page 75.

1678, 1679, and 1680. HELEN DEAS OF DAE *against* ISOBEL LINDSAY.

1678. *June 15.*—If a ground of compensation be repelled in a process where it is proponed by way of exception or defence, that will not hinder but it may be pursued for *via actionis* in a process; and the allegiance of *res hac-*