

and so the reason was only probable *scripto*. It was *replied*, That the tack being only set by the Dean of Guild, as having power from the Magistrates, and as one of the administrators of the common good of the burgh, and not being his own proper interest, the reason was most probable by the oaths of those who were joined in office with him. THE LORDS did sustain the reason to be proved by the Magistrates then in office, and ordained them to depone upon the verity thereof.

No 332.

Fol. Dic. v. 2. p. 238. Gosford MS. No 835. p. 528.

1676. July 25.

CAMPBELL against LD of ABDEN.

MERCHANT-accounts subscribed by a wife, afford sufficient proof against her husband. See No 322. p. 12477.

No 333.

Fol. Dic. v. 2. p. 238. Gosford.

* * * This case is No 97. p. 5879, *voce* HUSBAND & WIFE.

1685. January 24.

LAUDER against CHALMERS.

COLIN LAUDER merchant in Edinburgh, as assignee by Alexander Blair merchant, pursues Chalmers of Gadgirth for payment of an account of ware taken off by him, his lady, and children, from the said Alexander. He deponed on a commission, that, though the account was near L. 1000 Scots, yet he was only owing for ware taken off by his special warrant and order, L. 105 Scots. On this, Colin gives in a bill, showing that the rest of this account was truly furnished to his Lady and children, and that she was not inhibited, and the furniture did not exceed their rank and quality, and Alexander Blair was his nephew and ordinary merchant, and that he did not furnish them with necessaries *aliunde*, and so there needed no special warrant nor order for furnishing; and therefore craved he might be re-examined, and that his wife and children might likewise depone. THE LORDS having considered the bill and answers, they first decerned for the L. 105 confessed, and granted a new commission to re-examine Gadgirth, if it consisted with his knowledge, that the articles in the account were furnished to his Lady and children; as also his Lady and children to depone, if they received the goods contained in the said account; which was done, though they were *in familia*, and she *vestita viro*, and though they were not so much as convened in the summons.

No 334.
Where a husband was sued for furnishings to himself, his wife, and children, the wife and children were the evidence upon oath as to the goods taken off by them.

March 10.—IN Colin Lauder's case against Chalmers of Gadgirth, mentioned 24th January 1685, the LORDS having advised the second report, they decerned against him for the particulars acknowledged by his Lady and children to be received by them, notwithstanding of the quality in his oath, that he dis-

No 334. charged Alexander Blair, the pursuer's cedent, to furnish them, seeing they were not exorbitant, nor furnished *aliunde*; and notwithstanding of the quality adjected by the Lady to her oath, that Alexander Blair promised to take back the silver-lace; seeing it was yet in her hands for these several years; and they held one of his sons as confessed, because he would not depone but with this quality, that it was gifted to him, which is not presumeable, his part of the account being L. 137 Scots; the pursuer, before extract, proving that the prices contained in the account are the ordinary prices that such goods were sold for at the time; which the pursuer having done, and the depositions being advised, the LORDS decerned.

Fol. Dic. v. 2. p. 239. Fountainhall, v. 1. p. 333, & 349.

1686. *January.*

MAJOR BUNTEIN and DRUMMELZIER *against* MURRAY of Stenhope.

No 335.

A GIFT of marriage for the behoof of the vassal himself being decerned to be communicated to the sub-vassal, upon his paying a proportion of the composition, and the expenses laid out in procuring the same; the LORDS found the composition and expenses relevant to be proved by the pursuer's oath, without necessity of any other instruction.

Fol. Dic. v. 2. p. 239. Harcarse.

. This case is No 16. p. 7763, *voce* JUS SUPERVENIENS.

. See the like, March 1684, Bruce *against* Fraser, No 82. p. 9226, *voce* MUTUAL CONTRACT.

1698. *January 14.*

HOPKIRK *against* MARY DEAS.

No 336.
Furnishing to a minor *in familia paterna* of clothes and other necessaries, found not to fall by the triennial prescription, the account being artessed by the minor within the three years.

CROCERIG reported Hopkirk merchant in Edinburgh, *against* Mary Deas, and Mr Alexander Wedderburn her husband, and Mr James Deas of Coldingknows, Advocate, her father, for payment of the sum of L. 241 Scots, as an account of clothes and others furnished to her, and which she had subscribed. The defence for her husband was, I cannot be liable, because he furnished to her before her marriage, when she was minor, and a daughter *in familia*, and had no separate estate of her own; and so her father must only be convened for that; for either the furnishing was necessary, or superfluous; if necessary, it a proper debt, burdening the father; if exorbitant and superfluous, the merchant *sibe imputet quod credidat minori*, and she has *debito tempore* revoked. *Answered.* This being a moveable debt due by the wife prior to her marriage, the husband by the communion of goods, becomes liable for the debt. THE LORDS found, if she had been *sui juris et materfamilias* the time of on-taking of this account, and that she wanted a father, that then it would have affected herself, and consequently her husband *jure mariti*; but being *in*