nations on the part of the defender, at least of his uncle Sir Alexander Ramsay to bring about the marriage, the place where the articles were settled *remotis arbitris*, and the great inequality of these articles were at length insisted in. The Court were greatly divided, almost quite equally, and at last it carried by the President's casting vote, to find the reasons of reduction relevant and proved. Ramsay reclaimed, and his petition with the answers were advised 15th November 1752, when one of those who voted for the pursuer was not in Court, whereby the Court then was quite equally divided, so that it came to the President's casting vote and carried to find the reasons of reduction not proved. Then the pursuer in his turn reclaimed, and his petition with the answers were advised 2d March 1753, when the late President had left the Court through sickness, after which he never returned,—and Drummore, who was in opinion for the defender was in the chair, and the Court being again equally divided, the last interlocutor was altered and the first adhered to, so that notwithstanding the cross interlocutor none of the Judges appeared to have altered their opinions. For reducing were the late President, Milton, Kilkerran, Justice-Clerk, Dun, Shewalton, Woodhall. Against the reduction were Minto, Drummore, Haining, when in Court, Strichen, Murkle, Kames and I. This case I did not think worth marking at the time, because in reductions on fraud and circumvention, the circumstances of every case arise very different from all others, that it is scarce possible that one case such as this can be a precedent for others, and every case must be judged by its own merits. But Mr Ramsay having appealed, and the House of Lords having on Lord Chancellor's motion reversed our decree without any contradictory voice 10th December 1743,—the account Lord Advocate (who was counsel for Irvine) gave of Lord Chancellor's speech, (and none of the other Lords spoke any) was such as I thought deserved to be marked. He offered his opinion with the more freedom that the question turned not on any particularity of the law of Scotland but on fraud, which is the same in all countries and all Courts.—He allowed that the meeting at Gilliebrands looked ill, and justly stirred the attention of the Court of Session, and that the articles then signed appeared harsh and unequal, but that in all his practice he never saw a total reduction or setting aside of marriage-articles where marriage actually followed or took effect, and mentioned one noted case where that was attempted without success, though there was a strong inclination to give relief to the heir, who was of the Poet Wycherley, who had an estate settled on the heir, not alterable, but a power reserved to give a jointure to a wife, and Wycherley being disobliged with his heir married a young woman on his death-bed, in purpose to load his heir with the jointure, by the means or procurement of a young man, who soon after Wycherley's death actually married the widow. Yet Lord Macclesfield, assisted by Lord Ch. J. Pratt and King, with the Master of the Rolls, after solemn hearing, thought they could give no relief.—N. B. This case was argued at the Bar of the House of Lords three days.

(The date in the Notes MS. is 25th June 1753, and follows the date 14th December 1753.)

No. 33. 1753, Dec. 21. WILLIAM STEWART'S CASE.

WILLIAM STEWART was accused by summary complaint by his Majesty's Advocate of being accessory to the forging a bond by the late Lochiel to his brother Fassefern, whereon a claim was entered, being writer and one of the witnesses, as the bond is recited

in that claim, (for the bond is abstracted and amissing,) and the complaint served on Stewart who was prisoner in the castle. The petitioners moved to have him examined in presence, which Mr Lockhart for the prisoner opposed as incompetent after the trial had so far proceeded as to serve him with the complaint, to which he had put in answers. That question was this day argued at the Bar, and pretty fully on the Bench, when Justice-Clerk and I were clear that the examination was competent, for reasons that I have mentioned on the back of the complaint. But the Lords wanted to see a precedent quoted from the Bar in the case of Fitzgerald in 1746 which would have delayed it. Mr Lockhart, since the Court he thought seemed inclined to admit the examination, therefore in name of the pannel passed from the objection, and agreed to submit to the examination,—and he was examined accordingly.

FUNERAL CHARGES.

No. 1. 1735, July 24. DR LEARMONT *against* WATSON of Saughton.

See Note of No. 3. *voce* COMPENSATION.

No. 2. 1742, June 29. ROWAN *against* BARR.

THE Lords found funeral charges preferable to landlord's hypothec for rent, agreeably to L. 14. § 1. L. 45. Digest. *De Re et Sump Fun.*

No. 3. 1749, July 26. PETERS *against* MONRO.

THIS was a competition betwixt funeral charges and medicaments on death-bed, which of them were preferable, there not being sufficient subject, at least in this country, to pay both. The Commissaries preferred the funeral expenses; and on a bill of advocation for Mr Monro, the case was reported by Lord Easdale. I thought the funerator preferable agreeably to the civil law, but the Lords found them preferable *pari passu*.

No. 4. 1752, Dec. 23. A. *against* B.

LORD JUSTICE-CLERK reported a case for advice, Whether creditors for a wife's funeral charges have a preference in the husband's effects to his other creditors? We were no quorum, and therefore could not decide it, but both President and Justice-Clerk thought they had. But I thought, though the husband was liable, yet the law gave no preference on any effects but those belonging to the defunct, which did no hurt to commerce, whereas the other would go great hurt, and extend to parents and children as well as husbands and their heirs. *Vide* Newton, Decision 1, (DICT. No. 127. p. 5924.) The President agreed as to funerals of children, and they seemed to found their opinion on the supposed or rather imaginary opinion of a communion of goods. But what would be the case of other communions, as of societies or corporations?