tum, and if it were so, *sibi imputet*, for no reasonable man would part with the instructions of a debt, upon such a lame act. No 426.

THE LORDS found the acts of Council produced were not sufficient to instruct a debt against the Town.

Fol. Dic. v. 2. p. 249. Dalrymple, No 121. p. 168.

1724. *December 2.*

MR JAMES PHILP, and the Moderator and Presbytery of Ellon, *against* The HERITORS of the Parish of Cruden.

No 427.
Found that minutes of a Presbytery might be disproved, by proving they were disconform to the records.

IN the process betwixt the above parties, about settling Mr Philp schoolmaster of Cruden, observed the 7th February last, *voce* PUBLIC OFFICER, the defenders offered to disprove the extract of the proceedings of the presbytery, with respect to due intimation having been made, by their order, to the heritors; against which the pursuers *objected*, That presbyteries, being Courts of Record, extracts from their records ought to be sustained probative of their proceedings, as well as other Courts of Judicature.

It was *answered* for the defenders, That whether presbyteries were Courts of Record or not, it was certain that the alleged proceedings, in any inferior Court, may be disproven *per membra curiæ*, as the extracts from thence may be by the original minutes; or otherwise too great a power would be given to clerks, of framing wrong minutes, and giving wrong extracts.

THE LORDS found, that the defenders might disprove the minutes of presbytery, produced for the pursuers, by proving, that the minutes produced were disconform to the records, and that the facts therein mentioned were not so done; and remitted to the Ordinary to grant commission to the Judge Ordinary of the bounds to inspect the records, and receive the oaths of the clerk and other members of the Court.

Reporter, *Lord Pencaitland.* Act. *Jo. Dundas.* Alt. *Ja. Graham, sen.*
Clerk, *Hall.*

Fol. Dic. v. 4. p. 165. Edgar, p. 124.

1755. *March 1.* HELEN MILLER *against* GEORGE BEARD.

No 428.
The minute of a Kirk-session, bearing that the defender had acknowledged himself the father of a child.

THE pursuer *alleged*, That the defender was the father of a natural child brought forth by her, and pursued him for the expenses of the child-birth, and for the aliment of the child.

In proof of the fact, the pursuer produced the minutes of the kirk-session, bearing, that the defender being interrogated, If he was guilty with the said Helen Miller, and father of her child? acknowledged he was; and the oaths

No 428.
though not signed by him, but supported by the oaths of two members of Session, found sufficient to subject him to maintain the child.

of the Session-clerk, and another member of the Session, deposing to the verity of the said minute.

The defender set forth, That all he had acknowledged before the Kirk-Session, was, "That he had carnal knowledge of the pursuer only five months preceding her delivery." And he *pleaded*, That the minutes of the Kirk-session are not legal proof against him. They are not properly records, and are not sustained to prove the time of the birth, and baptism of a child inserted in them; much less ought they to bear faith in a matter deemed criminal.

2*do*, Supposing the record of the Kirk-session to bear faith, the defender's acknowledgment, therein mentioned, cannot militate against him, because not read to him, nor signed by him. In a case, decided 20th November 1679, Mackie against Miln, No 419. p. 12533. a decreet before an inferior Court, bearing, the defender's confession of his fault, not subscribed by him, was found not probative. To the same effect are the cases of the 13th February 1663, Linlithgow against Unfreemen of Borrowstounness, No 412. p. 12530., 19th July 1665, Gun against Mackewen, No 414. p. 12532.; 20th November 1672, Carrin against Wilson, No 416. p. 12532. This, therefore, being an established point, there is no reason for giving greater faith to the minutes of a Kirk-session, than to proper and legal courts of record.

With regard to the depositions of the two witnesses concurring in support of the verity of the minute, that the law is extremely cautious of allowing a proof by witnesses of *nuda emissio verborum*, because of the danger of words being mistaken; for this reason, promises are only probable by oath of party; and the like has been found, as to expressions in other cases, Div. I, Sec. 8 & 9, *h. t.*; this evidence, therefore, must be set aside. In which case, *argued*, 2*do*, That as his carnal knowledge of the pursuer was only five months preceding the delivery, and the child come to maturity, he could not be the father; and it lay upon the pursuer to prove his dealings with her earlier than the time mentioned.

3*tio*, He alleged the pursuer was a common prostitute, whose offspring is, in law, called *vulgo quæsitus*, and is presumed to have no particular father.

Answered to the first and second, That, in a matter of this kind, the minutes of the session, supported by the oaths of two of the members, added to his own limited acknowledgment, were convincing evidence.

To the third, That it was not relevant: he might pursue for relief against his partners.

"The Lords found the defender liable in expenses of child-birth, and for aliment to the child."

Act. *Millar.* Alt. *Pringle.* Clerk, *Forbes.*

S. *Fol. Dic. v.* 4. *p.* 165. *Fac. Col. No.* 145. *p.* 216.