

1670. *July 27.* MR. JAMES MIRK *against* M'CORCADELI.

MIRK having married his daughter on this defender; and having, among other obligations, engaged himself to pay 7,000 merks in name of tocher, raises a reduction of this contract, on this reason, that he must be liberated from any performance of such obligations as are upon his part, in regard the other party, his son-in-law, not only has not performed his part, but is altogether unable to perform any part thereof, he not being *solvendo* for a sixpence; and yet made him believe that his brother, a Laird in the Highlands, had subscribed the contract; whereas there was no such thing; and he has since improven the subscription. ANSWERED,—His not fulfilling not *releuat*, because ye have an action whereby ye may pursue him for implement.

The Lords inclined much to repel the reason of reduction.

*Act.* Spotswood.

*Alt.* Trotter.

*Advocates' MS. No. 98, folio 85.*

*Vide infra, June, 1677, No. 579, § 6.*

1670. *July 27.*

Anent *JUS MARITI*.

IN the case betwixt ——— and ———, it was alleged, the husband was nothing but a legal administrator of the goods belonging to his wife, though such as can not be called to an account during the standing of the marriage; and that the *jus mariti* (conform to the 32d act in 1661) carries not with it a right to heritable sums due to the wife, except only *quoad* the annualrent thereof.

*Partibus, Cunyghame and Birnie.*

*Advocates' MS. No. 99, folio 85.*

1670. *July 29.* LORD RUTHERFORD *against* JOHN RUTHERFORD.

I hear there is an improbation raised at my Lord Rutherford's instance, against one John Rutherford, a servant of his umquhile brother's, and one who intromitted with his estate divers years, of some bonds granted to the said John by the deceased Lord Rutherford, amounting near to L.2000 Sterling, with a general discharge of my Lord's, of all he could charge him with, and an assignation to sundry debts due to my Lord. The reasons against the assignation are, *Imo*, Offers to prove, my Lord was lying in the abbey sick that day, whereon the said assignation is forged to have been subscribed; and yet it bears subscribed at London: so this reason is an *alibi*, and for adminicling the same, they adduce James Borthwick's account book, bearing that a potion of physic was administered to my Lord that day, he lying in the abbey. *2do*, There's one Brown (designed in the assignation indweller in Lauder,) who is writer thereof, and also subscribes as a witness, there was never such a man neither dead nor living; or if they can adduce any such man, then they offer to prove that's not his hand write. *Vide infra*, [Historical volume,] thir persons hanged.

*Advccates' MS. No. 101, folio 85.*