

the Isles *contra* Shaw ; but there is a contrary decision observed by him at the 19th and 28th of July, 1625, Walwood *contra* Tailzeor ; and Mascardus, there cited. It might have been likewise urged for Sauchy, that all these clauses which restrict the liberty of marriage are reprobated in law. Which see debated *supra*, No. 306. [20th January, 1672.] See also No. 365, [10th July, 1672 ;] and the Informations of the cause beside me.

*Advocates' MS. No. 394, folio 217.*

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1673. *June.* JOHN BEATON, Minister of Ayton, *against* HIS PARISHIONERS.

IN the action pursued before the Commissioners for Plantation of Kirks, by Mr John Beaton, minister at Ayton, *against* his parishioners, for making up that proportion of his stipend which was evicted from him by Mr Thomas Ramsay, minister at Mordington, out of the lands of Lammerton ; there being a great quantity of free teinds in the said parish of Ayton, and the heritors disputing amongst themselves who should bear the burden : the Lords inclined to find, and that upon most just grounds, wherever an augmentation is granted to a minister, such heritors as have the right of other men's teinds shall be *primo loco* liable before any who have acquired the right of their own teinds shall be burdened therewith. And which interlocutor was upon the occasion of the deceased Lord Renton, who had many teinds besides his own ; and which, being an odious purchase, deserves no favour in law.

*Advocates' MS. No. 395, folio 217.*

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1673. *June.*

— *against* —

ONE having charged for a tocher upon a contract of marriage, the same was suspended, upon this ground ; that, by the same contract, the husband was bound to employ a certain sum, upon sufficient security, to himself and his wife, in liferent and conjunct fee, and to the bairns of the marriage in fee ; and which is not yet done ; and till that obligement and condition of lying so much foregainst it be fulfilled, the tocher cannot be paid ; at least, they must be fulfilled *simul et semel*. Pitmedden says, that the Lords suspended the letters aye and while the charger fulfilled his part, as in correlative obligations, and employed the sum conditioned by him conform to the obligement of the said contract. *Vide* a like case *supra* at No. 321, [Laird of Balnamoon *against* Macintosh, 9th Feb. 1672.] Yet this may prove very hard to exact of merchants, to cause them to give out their stock (with which it is far more their interest to trade,) upon annualrent, so destined and clogged.

*Advocates' MS. No. 396, folio 217.*