

1673. *June.*KINLOCH *against* ———

MANNA KINLOCH, spouse to James Charteris, writer, being convened before the Lords of Secret Council, for breaking the sumptuary act regulating apparel, two points fell to be spoken of; but were not debated, because she was assolied through lack of probation. The first was, Where a married woman is convicted of the breach of a penal statute, what the effect of the same is in law: if it can extend to her husband to make him liable in the fine; or if it will allenary operate to punish herself in her person, by imprisonment, or in her goods, at the dissolution of the marriage. I think it ought not to burden the husband: else many wives, to affront their husbands, or otherwise be avenged on them, would break it of purpose. But see this point fully debated at my observes upon the said sumptuary law, [*supra*, 1st June, 1673.] See also the 5th Act in 1670. The second thing was, If the transgression of that act was probable by women; for, being at a rousing where she was noticed, there were few others save women observed her. It seems contrary to law to find it so probable; for, albeit they admit women to be witnesses in *puerperio*, anent the vivacity of children when born, for carrying the tocher, yet an absolute necessity is the cause of the singularity there; because, if they rejected women, they should never prove it, it being an act transacted commonly by women alone, and none else present; but regulariter they are not receivable, except it be, *Imo*, In scoldings and small riots; *2do*, In crimes of the highest nature, as treason and witchcraft. See Mr Norvell's opinion on this, *alibi apud me*.

*Advocates' MS. No. 397, folio 217.*

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1673. *June.*ROBERT DEANS *against* ———

A CHARGE, given by Mr Robert Deans, advocate, upon a bond, being suspended, on this ground, that the bond was null, because vitiated *in parte substantiali*, *videlicet*, the sum; it being clear, by ocular inspection, that 100 merks was made 800 merks; for which reason, the Lords annulled the bond *in totum*, and would not so much as sustain it for the 100 merks, which was confessed by all to have been the true sum contained in the bond *ab initio*; and that *in poenam falsi*. Though we say *utile per inutile non vitiatur*, and especially if the charger was an assignee, and not *particeps fraudis*. *Vide* something like this, *supra*, No. 362. [19th July, 1672, *Jack against Jack*.]

*Advocates' MS. No. 398, folio 217.*

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1673. *June.*BIRNIE *against* CRAWFURD.

BIRNIE and Crawford competing in a double poinding for a sum which both of them had arrested, Crawford craved to be preferred, in regard he had arrested first. (*Vide Cavalcanum de Testibus*, p. 39, et 67, et 68.) Birnie contended, that