

wise probable than *scripto vel juramento*, to take away her written obligation in her contract of marriage; but we prevailed this far, that she should be ordained to depone in presence of the debtors condescended upon by us, who paid in to her the third part of the heritable sums they were owing; but declared, that if Marshall, the defender, had them not ready to confront with her at the day assigned to her for deponing, (to which purpose they allowed him an act for citing them,) their not comparing should be no hinderance to her from deponing. So that, when the day came, and she offered to depone, we could not get it stopt on the production of a diligence executed against them, and in seeking a farther diligence by caption; because the Lords supposed it was *animo protelandi*, and that he kept them back, and might have had that influence and moyen to have brought them in upon the first citation. See the informations.

On the 10th of November, 1677, her oath being advised, the Lords found it did not prove the defence that she had got the full third; and therefore decerned, but declared, what she got more of the moveables than is proven before the Sheriff in that decret, they will allow them to compense *pro tanto*; for she affirmed, in her oath, these sums were given her for alimenting the bairns, and not in satisfaction of the conquest.

*Advocates' MS. No. 518, folio 269.*

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1676. *December 13.* FRANCIS MONTGOMERY *against* LORD MELVILLE.

THIS day was Mr Francis Montgomery, brother to Eglinton, and my Lord Melville's interlocutor about his *jus mariti*, and that the assignation was sufficient to purge vitious intromission, and that he was liable in *quantum locupletior factus erat*, &c. The case must be inquired into.

*Advocates' MS. No. 521, folio 270.*

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1676. *December 13.* DR HALIBURTON *against* LORD BALMERINO.

DR HALIBURTON, one of the creditors of the last Lord Coupar, had a favourable interlocutor against the Lord Balmerino, who had got that estate. The Lords found, where an apparent heir, (such as Balmerino was to Coupar,) caused comprise the predecessor's estate for a debt owing by the said apparent heir himself before his interest exists by his predecessor's decease, it shall infer *gestionem pro hærede*, (as in the Earl of Nithsdale and Glendyning's case was determined by act of sederunt in 1662;) if the apparent heir enter in possession by that comprising, either by communicating it to others, who bruik by it and have no other better right, or by uplifting the maills and duties, or by entering vassals. And Haliburton was very clear he could fasten some of thir qualifications on Balmerino. But their re-