

she was at least obliged to do, since it is possible she might have persuaded her father to consent; unless she will prove that he was *non suæ mentis*, or she will condescend upon some other relevant reason why she needed not seek it.

If a father shall give his child a bond for 10,000 merks, with this quality, In case he or she marry without his consent, that then the bond shall be absolutely null; it is thought this is an unlawful quality and condition: but if it bear, that he restricts the 10,000 merks to 5000 merks, in case of their marriage without his consent, the bond in that case will only be sustained for the 5000 merks; for that doth not absolutely impede their marriage, nor render them destitute of an aliment.

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1680. *February 13.* The REVEREND JOHN BIRNY *against* The HERITORS of CARLAVEROCK.

MR John Birny, minister at Carloverock, amongst other vicarage-teinds, craves likewise the teind of a weaver's loom, in respect of the custom in that parish of paying teind *ex isto textrinæ artificio*; as also, he craved the vicarage of the salt gained at the sea-side, made and cast up by the sun; *nam decimæ minores sunt locales*.

The Lords found these due, in respect of the probation of the forty years' possession by him and his predecessors, ministers at that church, though he was competently provided without this. See 21st June 1649, Charles Lumsden, Minister at Duddingston, claiming the teind of tobacco which once grew there: as also, for thir unusual teinds, elegant decisions in Basnage's Comment. on the reformed Customs of Normandy, p. 22.

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1680. *February 13.* WILLIAM LOCKHART *against* CROMWELL LOCKHART of LEE.

In the cause, William Lockhart against Cromwell Lockhart of Lee, a declinator was given in against Lord Castlehill, his uncle; as also, because it was *in causa tangente famam patris*: yet the Lords rejected the declinator.

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1680. *February 13.* ANENT THE SEALING OF SIGNATURES.

In a competition betwixt two base infetments confirmed, the one craves preference to the other, because, though both their signatures were presented and past in one day, yet his was sealed three or four days before the other. This was taken to interlocutor by Castlehill. But I think the date of the passing the signatures is the rule of preference, or the coming in *pari passu*; and not the appending the seal, though it should be delayed for several months.

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