

1681. *June 7.* GEORGE WEDDELL *against* GEORGE SALMOND.

GEORGE Weddell, having married his daughter to George Salmond, and paid the tocher, pursues Salmond for repetition of the tocher, because the marriage was dissolved within year and day. The cause was disputed the 25th day of February 1680;—

And the Lords found, That, if the year was complete, and the day after the year begun, the husband should have the tocher; otherwise that it should return to the father. But the point to be proven being so narrow as the precise time of the woman's death, the Lords allowed witnesses, *hinc inde*, to be examined upon the time of her death; and both men and women were allowed as witnesses *ex officio*. And being this day advised, it was proven, That the marriage was solemnized upon the 23d day of November, betwixt eleven o'clock and one in the afternoon; and that the woman died upon the 23d day of November, about ten or eleven o'clock at night, in the next year. Whereby the question came, Whether the marriage had stood undissolved for a whole year, and a part of a day after the year, or not. And whether the year was to be reckoned *de momento in momentum*: so that, the marriage being solemnized about twelve o'clock the 23d day of November, if the wife lived a twelvemonth, *viz.* 365 days and six hours, and an hour more, it would be sufficient to reckon *de momento in momentum*; or, whether the reckoning should be *calculo rotundo*, by the full number of the days of the year in which the marriage and death occurred, without consideration of hours or moments.

The Lords found, That the adjection of a day to the year was to shun the debate of hours or moments; and therefore found, that it being proven that the woman was married the 23d day of November, and died the 23d day of November the next year, there could not be two twenty-thirds of November in one year; and therefore the woman lived one year, and a part of the day of the next year; and so the tocher was found to belong to the husband, and he was assoilyed from repetition.

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1681. *June 8.* The KING'S TRUMPETERS *against* The BISHOP of CAITHNESS.

FERGUSON and others, having a gift, from the King, of being his Majesty's trumpeters, and all emoluments thereto belonging; having obtained general letters thereupon, they charge the Bishop of Caithness to pay 100 merks, as being the due and accustomed allowance to the trumpeters for every Lord and Bishop at their obtaining of their dignity to be Lords of Parliament.

The suspender ALLEGED, That, albeit some of the bishops, by way of gratification, might have given the King's trumpeters what they thought fit at their entry; it cannot induce a burden upon the Order, nothing such being imposed by law or custom. For, albeit there be an Act of Parliament of the dues payable to the Lyon, by all temporal lords, at their erection; yet that Act mentions nothing of the bishops, being but for life, nor any thing of the trumpeters.

It was ANSWERED, That the dues of all offices of the kingdom are only by