

*bra curiæ*, (the Magistrates' oaths,) what contradicted their Acts of Council, which ought to make more faith than to be disproved in such a manner;---but the Lords found the qualifications foresaid so probable. *Vol. I. Page 787.*

1697. *July 23.* The EARL of TILLIBARDEN *against* MR DAVID GRAHAM of KEILLOR.

THE Earl of Tillibarden, against Mr David Graham of Keillor,---being a declarator, That he had bought and acquired the lands of Keillor for the Marquis of Athole and the pursuer's behoof, as their trustee, in regard he was depositary of a right from Murray of Keillor to the Marquis, and likewise of the Marquis's bond for the price; and, that disposition not taking effect, he bade at the roup of the lands, and carried it as the greatest offerer; and, by letters subsequent thereto, insinuated as much as if he had purchased them for the Marquis's behoof. ANSWERED,---The trust ceased when the lands were exposed to sale; and the letters import no more but that he was willing to treat with the Marquis; and any such communing may be resiled from before delivery of writs; and he had no compulsitor whereby he might force the Marquis to have taken the bargain off his hand: Likeas, he had sold his place as clerk to the bills to pay the price, which no trustee would have done.

The Lords found it a continuation of the first trust; and ordained him to denude on payment of the price and all his expenses, he being kept *indemnis cum omni causa*. *Vol. I. Page 789.*

1697. *July 27.* MARGARET SMITH, and JAMIESONS, her Children, *against* FORBES of BALFLUG.

MARGARET Smith, relict of Jamieson, and her Children, pursuing Forbes of Balflug for a spuilyie,---the DEFENCE was, It is prescribed, *quoad modum probandi*, by the Act of Parliament 1579, not being intented within three years after the committing. The ANSWER was,---The children are minors, against whom that prescription does not run. REPLIED,---The title, as executrix, is in the mother's person, who is major, and cannot stop the prescription. DUPLIED,---It is only *nudum officium*, and she is *fidecommissaria*, and trustee for the nearest of kin, the legatars and creditors; and so the bairns, *jure sanguinis*, having the natural right,---the personal privilege, That prescription runs not against them while minors, may very well be proponed by the mother *ob connexitatem causæ*, they being *consortes ejusdem litis*: and the mother is not *domina bonorum mobilium*; for, if she were denounced rebel, they would not fall under her escheat; as was found, *21st December 1671, Gordon against Irving*. TRIPLIED,---The sole administration and *jus exigendi* is vested in her person; likeas, she has right to a third of the moveables *jure proprio*: and, if this were sustained, its consequences might go too far; seeing creditors have an interest in the executry of their debtors; and, *posito* that one of them were minor, would that afford a defence of minority to the executor?