

*Seton of Touch* against *Dundas*. *2do*, As it is incompetent, so it is irrelevant ; for a husband may provide his wife *in lecto*, if it be not exorbitant ; *23d February 1665*, *Rutherford and Pollock* against *Jack* ; and *21st January 1668*, *Shaw* against *Calderwood*. And my provision is very moderate and small ; and, in remuneration of a greater, I renounced. To the *second*, No tailyie can be interpreted to bind up a man from giving a suitable provision to his wife, it being a natural duty, where marriage is not prohibited. *2do*, This tailyie being posterior to the Act of Parliament, 1685, introducing them, and ordaining them to be registered in a particular register, and this not being so registrate, it could lay no impediment on her husband to give her this moderate jointure.

REPLIED,—That the tailyie was under the strictest and severest irritancies ; and, though it was posterior to the Act of Parliament, yet it related to one before it ; and tailyies were allowed by our law prior to that Act, as in the case of the Viscount of Stormont and Creditors of Annandale ; and the not registration is not declared a nullity.

The Lords thought the whole weight of this debate lay on the tailyie ; for, to loose them, may endanger the best estates in the kingdom ; and if it had been a locality, and not an annuity, there would have been less debate ; but found, The tailyie not being registrate, it did not hinder him to give her a moderate jointure. Others thought this a dangerous decision, and inclined to have it heard debated in presence. And, upon a bill given in by Hartside, offering to pay her the annuity *medio tempore*, the Lords stopped the extracting of the decret till November, that it might be farther heard and considered, as being of moment and importance.

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1704. November 4. WILLIAM FOULIS against HEPBURN.

MR William Foulis exhibited a complaint against one Hepburn, a servant in his office, that he had forged his subscription to the registration of one Kenneth Mackenzie his seasine, only for the benefit of the dues ; and, being challenged, he acknowledged the falsehood.

The Lords granted warrant, in respect of his absconding, both to cite and apprehend him ; and ordered the Queen's advocate to insist against him ; and, in case of not compearance, to denounce him fugitive ; and appointed the seasine to lie in their clerk's hands. It was started, this registration being null, and the sixty days expired, Who should be liable to the party's damage, who must take a new seasine, and, if there be a competition, may fall to be postponed in his diligence without his own default ; seeing the delinquent was both absent and unable to refund ; and if the keeper can be liable, who *malorum ministrorum opera utebatur*, for whom he should be answerable. But the party, taker of the seasine, not having yet applied, this inspection was laid aside at present.

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