1666. *July* 12. BRUCE *against* STEWART.

IN this cause, found that a clause on a margin of a bond or contract, is not obligatory if not subscribed; but if the granter of the bond write on the margin with his own hand, (so that the body of the bond and the clause in the margin be holograph,) though he subscribe it not, it will be more dubious if that clause marginal be obligatory or not: as in the case of the bond of provision granted by the *Laird of Durie* to his daughter: which is not decided.

Act. Lockhart. *Alt.* Sinclar.

Advocates' MS. folio 56.

1666. *July* 20. JACK *against* JACK.

IN this case, found that all assignations granted by a father to his children, even though not *aliunde* provided, and albeit not known to be bankrupt, being made after debt contracted by him, are null by the act 1621: or if the assignation or bond was granted by a third party, by the father's means and moyen to his children, they being *in familia,* found it to be a donation, and in that same case as if it were made by the father, and subject to the payment of the father's debts. Also found, that a creditor having comprised the fee of that sum from the bairns was also null *in consequentia;* but this last was not reported; whereas the Lords inclined that if the children, who were fiars of the sum granted to them by their father, had for an onerous cause assigned or disponed that fee to their creditors before the reduction, that then the same would not fall *in consequentia.* For they found a great difference, by the act of Parliament, of dispositions made by a conjunct person to his creditors, and of comprisings led against them at the instance of creditors; and that though a right may be reduced, upon the act of Parliament so long as it stands in the person of the children, as being conjunct persons: and yet if it be disponed to creditors by the children, they found it not to fall under the compass of the act of Parliament, but found it more favourable in the creditor's person. But why a creditor righter ought not to be as favourable, I see no reason: but the reason it seems is the express tenor of the act of Parliament.

Act. Lockhart. *Alt.* Wedderburne, Mackeinzie, and Dinmuire.

Advocates' MS. folio 56.

1666. *November* 10. DOUNIE *against* YOUNG.

IN this case found, That an executor recovering a sentence in his own lifetime, albeit he get no payment nor intromit with the sum decerned, yet that sentence makes the testament to be *executum in quantum;* and there is no place to a *dative*

quoad non executa, albeit the executor was but a stranger and had not *jus sanguinis.*

Act. Wallace. *Alt.* Lockhart. *Advocates' MS. folio* 56.

1666. *November* 10. ARCHBISHOP OF ST. ANDROIS *against* HIS TACKSMEN.

IN this case found, That the act of Parliament declaring all valuations and decreets of Plat null, deduced since the 1637, did put the intromitters with the teinds *in mala fide* to pay to any other, albeit they paid by virtue of a sentence.

Act. Sinclar. *Alt.* Beton. *Advocates' MS. folio* 56.

1666. *December* 20. HAY of Knockhoudie *against* JOHN LITLEJOHN.

JOHN LITLEJOHN, merchant in Edinburgh, having comprised the liferent of a tenement in Leith, which being ruinous did thereafter fall; by which another tenement lying adjacent, belonging to Hay of Knockhoudie, was damnified in the sum of three or four hundred merks; after trial by the Dean of Guild and Council of Edinburgh, being found to be no less; for which Knockhoudie raises summons for payment of that sum, as the damage and interest sustained by him through the fall of his house.

ALLEGED, That he having comprised but the liferent of that house, his right was but temporary, and the heritor only could be convened to pay the sum acclaimed.

The Lords found the compriser of the liferent liable for this damage, reserving action to him against the heritor and liferenter for his relief.

Act. Norvell. *Alt.* Lockhart. *Advocates' MS. folio* 56.

[See the conclusion of this case, *infra,* page 441.]

1666. *December* 20. LYELL *against* BRAND.

LYELL, a chapman, having deposited his pack *custodiæ causa* with Brand, a merchant in Dundee, from whom he also borrowed L.5 Sterling: and Brand, after the chapman's absence by the space of a month, having by warrant of a bailie opened the pack and inventoried the same, but without any sentence recovered against the chapman for payment of the L.5; and being pursued for spulyie of the pack, he ALLEGED, That the chapman being his debtor, he did only sight the pack, to see what he had for his money, but noways alleged the pack was impignorat to him for his security; and being done *authore prætore,* it ought to