

1678, 1679, and 1680. ALEXANDER ARBUTHNOT of KNOX *against* MARGARET STRAITON, Lady KNOX.

See the prior part of this case, Dict. page 13,389.

1678. *December 12.*—ALEXANDER Arbuthnot of Knox his improbation against the Lady Knox (*vide* 6th Nov. 1678,) being called in the Inner-House, I deduced all the indirect articles of improbation against her bond ; which I here omit, because they are to be found in the informations.

The Lords ordained Alexander to produce all adminicles and evidences by writ, or witnesses, or comparing hand-writs, for convelling the faith of said bond ; as also allowed her to prove and astruct the said bond, and that it was produced in her husband's lifetime, and seen at Exchequer, and elsewhere, and by whom ; and grant diligence to both parties for that effect.

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1679. *January 8.*—The removing pursued by Margaret Straiton, Lady Knox, against A. Arbuthnot, (*vide* 12th Dec. 1678,) being again reported ; the Lords found, that the consent adhibited by a lady-liferenter to a minute of a contract of marriage, not being repeated in the extended contract itself, does import that her consent was only to the marriage, and does not prejudge her of her liferent right. And find, that the lands in question, being purchased by the husband, during the marriage, to himself and his wife, in conjunct liferent, and to the longest liver, is not revokable as a donation *inter virum et uxorem*, in respect of the bond prior to the marriage, whereby he was obliged to infest her in the conquest during the marriage : but reserve to their consideration, whether this bond itself may be annulled as *contra pactum dotale* ; or may be revoked as granted after the marriage, because it is granted after the solemn settlements contained in the contract of marriage ; to be determined at the advising of the reasons of reduction and improbation against the said bond : and supersede the determination in the removing till the 15th June next ; betwixt and which time the defender, A. Arbuthnot, may insist in his improbation. *Vide infra*, 17th December 1679.

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1679. *December 17.*—The probation led betwixt Arbuthnot of Knox, and Lady Knox, (8th Jan. 1679,) being advised, the Lords, before answer, ordained trial to be taken by production of bonds, containing clauses of registration, before the English came to Scotland in 1650, running and conceived thus :—*To be registrate in the books of the Lords of Council and Session, or in the books of any other Judges.* For it was ALLEGED,—That style of judges' books was introduced by the English ; and that formerly it run *in any other court-books* ; and so there was a presumption of falsehood from that recent style, the bond bearing date in 1638. But, after trial, it was found there were clauses of registration conceived both the ways before the English usurpation.

I hear that the Lords improved a writ, because, by ocular inspection, betwixt and the light, it appeared that a sheet was taken out, and a new sheet put in with a mark and stamp on the paper, which was not in being when the said contract bore to be dated and subscribed.

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1680. *June 18.*—In the improbation pursued by Alexander Arbuthnot of Knox against the Lady, (12th Dec. 1678 ; ) the Lords granted her a farther diligence for adducing witnesses to astruct the bond offered to be improven, al-

beit the cause this half year was so concluded as it was lying ready to be advised, and the persons against whom she craved her diligence were examined already; for *nunquam concluditur in causa falsi*. Vide 14th July 1680, *Robertson*; and 21st July 1680, thir parties. *Vol. I. Page 102.*

1680. *November 30.*—In Arbuthnot of Knox his improbation and reduction against the Lady; the Lords, contrary to what they did formerly, (8th Jan. 1679,) now find her consent to the minute of his contract of marriage is a homologation of Arbuthnot's right from Colonel Hary Barclay, in so far as concerned the fee of the lands dispooned, but not *quoad* the liferent; as to which, they would not find she had prejudged herself.

The Lords declared this was not so much a decision *in jure*, as an advice and a trysting interlocutor; and they would appoint her liferent of the whole, in so far as exceeded her contract-matrimonial, should only commence at Whitsunday next; so that he should not be liable to her for bygones.

But neither being satisfied with this, see it fully decided at the 15th December. *Vol. I. Page 119.*

1680. *December 15.*—The improbation, Arbuthnot of Knox against the Lady, being finally advised this day, the Lords improved the bond *quoad omnes civiles effectus*, and ordained Mr Alexander Steven to be apprehended, (whom there is ground to suspect as the forger,) and other of his writs to be produced, that they may be compared with this bond.

The Lords went on the reasons of reduction, joined with the suspicions of falsehood; but, out of pity to the Lady, would not declare it false.

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See partial reports of this case in Morison, p. 13,389, 13,390, 6,761, 6,527, and 16,681, by Fountainhall and Stair.

1680. *December 16.* BURNET of CRAIGMYLE *against* BURNET of CRAIGOUR.

In the action of maills and duties, Burnet of Craigmyle against Burnet of Craigour, an Act having been surreptitiously extracted without hearing all Craigour's defences; upon a bill given in by him craving the Act might be called back and cancelled, the Lords ordained Craigour to found what defences he had to propone farther than was already contained in the Act, that they might see if there was any just cause for rescinding the Act, and restoring against the same. *Vol. I. Page 122.*

1680. *December 23.* RENTON of LAMERTON *against* HOME of POLWART.

In Renton of Lamerton's case against Home of Polwart, a seasine being quarrelled as null, because, in the act of tradition, instead of saying, "by delivery of earth and stone," it says, "by delivery of the ground of the lands," which is earth, but not stone; and that this is *de forma specifica*, and essential:

The Lords found the seasine, being *in re antiqua*, viz. thirty years ago, valid; but, if the notary was alive, ordained him to be deprived for his informality.