that a copy was delivered to him; the Lords annulled the inhibition for this want, although they offered them to prove, in fortification of the messenger's execution, that a copy was truly delivered to him. This was between Sir John Keith and ——.

Advocates' MS. No. 307, § 6, *folio* 126.

1672. *January* 20. —— *against* SIR ANDREW and LADY DICK.

SIR ANDREW DICK's lady and himself being pursued upon a bond granted by her, it was ALLEGED to be null, because given by a wife clad with a husband, without his consent. ANSWERED, 1*mo*, She was *præposita negotiis*, and the subject matter of the bond was what fell under her præposition, viz. for meat and drink furnished; and so being *ob alimenta familiæ præstita*, it was *in rem mariti versum*; and that it was for the price of victual, refers to her oath. REPLIED, The wife can depone nothing in prejudice of her husband.

Yet the Lords found in this case, the wife ought to depone; and she confessing that to have been the cause of the bond, they would sustain it. Yet see Hadington, *23d June* 1613, *Clement Russell* against *the Earl of Argile*, which seems somewhat contrary.

Advocates' MS. No. 308, *folio* 126.

1672. *January* 24. MR. JOHN ANDERSONE *against* JOHN WATSONE.

I WAS this day informed of an action pursued in 1664, by Mr. John Andersone, parson of Dysart, against John Watsone, heritor of the Pathhead, as he who had the only Kirklands in the parish, for a glebe. Wherein it was ALLEGED, 1*mo*, That being a minister of a burgh royal, he could have no glebe.

ANSWERED,—That all ministers, though of burghs royal, had right to a glebe, providing they had any land-ward parish belonging to them, as he had; and that the 20th act of Parliament in 1663, does not exclude all ministers of royal burghs from a glebe, but only some.

The Lords found he had right to a glebe, because he had likewise the cure of a country parish.

2*do*, They ALLEGED, that the parson of Dysart could seek no glebe, because of old they had a glebe designed to them, viz. That part of the town of Dysart which is called the rectory, which at that time was in acres,* and was by the parsons since feued out at sundry times to several persons who have built houses thereupon, and pay a small feu-duty of two pence or three pence to the parson as superior and rector of the said rectory; who likewise enters the heirs and singular successors in these tenements for a composition; and if the parsons have

* Which acres at least were parson's land, and, by the act of Parliament they must be designed before other kirklands.

prejudged themselves of their glebe in the manner condescended on *sibi imputent.* *

To this it was ANSWERED,—That the said rectory will not be the third part of the town; that the haill feu-duties paid him will scarce make a dollar a year; that this ground was feued out long before the acts of Parliament appointing ministers to have glebes, and so cannot be reputed his glebe.

Yet the Lords construed it "instead of his glebe;" only they did him this favour, that the haill ground whereon these houses were built should be met, and if it wanted any thing to make it a complete glebe, conform to the quantity designed by the acts of Parliament, that then the same should be made up out of the Pathhead, because the defender could condescend upon no other parson's lands, save these of this rectory. Whereon they transacted the matter; and for the overplus, Watsone obliged himself to pay the parson, yearly, a sum of money during his incumbency there. See this decision, *Tit.* 9, *voce Gleibs,* in an 8vo. MS. of Pratiques.

Advocates' MS. No. 309, *folio* 126.

1672. *January* 24.

A PUPIL being pursued either as lawfully charged to enter heir or to renounce lands because of an order of redemption used, and compearing, and producing a renunciation subscribed by his tutor, taking burden for the pupil; the Lords sustained the same as a good and sufficient renunciation;

Albeit it was ALLEGED,—That it ought to be subscribed by the pupil's self, principally, and also by his tutors. Which was repelled, because *in ætate pupillari tutor gerit personam pupilli;* yea few can write any till they be ten or twelve. What if the child be a lass, who if of the minor sort, are seldom taught to write at all? It is granted, after tutory expires, the minor begins and acts principally himself in all deeds, and his curators do but consent; *at res aliter se habet in tutela ubi datur personæ non rebus; intellige principaliter. Vide infra, No.* 411, [*July,* 1673.]

Advocates' MS. No. 310, *folio* 127.

1672. *January* 25.

A SUSPENSION having been quarrelled as passed, contrary to the regulations, in so far as by the nineteenth article thereof, it is ordained, that no decreet *in foro* be suspended if in the time of Session, till the bill be presented to the haill Lords; if in the vacance time, then it must be passed by three together; and that this suspension, though a decreet *in foro,* was passed only by one, viz. my Lord Newbyth, and so was null.

* Yet see act 27, Parliament 1563, prohibiting glebes to be set in feu or in tacks.