time and days of the Parliament; for, 1*mo*, These days wherein the Parliament did not sit, there can be nothing paid for them. 2*do*, If it shall appear any of the Commissioners were absent any of these Session days, there is no reason they should have anything allowed them for that time. 3*tio*, Where the said act of Parliament seems to allow them something to carry their charge in going home or coming back, there is no need of it here; seeing they can either go to Edinburgh from their several interests, or return in two hours' time; which deserves no consideration. And yet the 18th act, 1641, allows the Commissioners of the Sheriffdom of Edinburgh, for their coming and going, one day's pay, which is 5*l.*; but that act is rescinded, except in so far as is revived by the act in 1661, which passes over that part of the act 1641, and sundry other articles of it, in silence. As for that point, whether or no they should get allowance for each individual day, from the sitting down of the Parliament to its rising, without adverting to its session, or no session; if as to this effect, the time of the Parliament must be computed to be *tempus continuum*, (as is done to the King's Commissioner,) or only *utile*, seems somewhat dubious; for though it would appear hugely reasonable, that it should only be understood of sitting days; yet the same reason would dictate, especially in behalf of those who come from some distance, that their trouble, their charge, and loss of their private business, is the same, as well the not sitting days as the sitting; seeing they cannot retire during the interval to their own homes: and which being occasioned for their shire and constituents' interest, their maintenance ought to be upon their score; seeing *officium nemini debet esse damnosum*.

Advocates' MS. No. 388, *folio* 215.

1673. *June* 1. ANENT THE SUMPTUARY LAW REGULATING APPAREL.

THIS day being the first day of the Session, and the day at which the sumptuary act regulating our apparel took its beginning, and the Lords having little or nothing else ado, and many of them inclining to gratify the merchants of Edinburgh, so far as was possible; they fell to consult and debate if the said act prohibiting all clothes made of silk stuffs to be worn by any except the privileged persons, reached to farandains; which are part silk, part hair. It was fiercely urged by Halton, that they were undoubtedly comprehended under the prohibition; else the law should be so far from attaining its design, that it should be easily mocked and eluded; for as it was notourly known to have been made to bridle our exorbitant prodigality and needless expense we were profusely run to, so it is as notour, farandains being once allowed promiscuously to all ranks, we shall be worse than ever; seeing they are as dear, and of far shorter last than other silks. 2*do*, Farandains being a heterogeneous body, wherein silk makes both the noblest, preciousest, and the greatest part; the same, *jure accessionis*, must draw the hair, as the lesser and more ignoble, to its laws, and must give the denomination to the whole. And so the hair, being swallowed up as an accessory, can enter into no consideration here; but the stuff must be reputed silk, *ab eo quod est in illo potentius.* Vide parag. 26, et seq. Instit. De rerum divisione, ibique Vinnium. Vide l. 24 et seq. D. De acquir. rerum dominio; l. 23, p. 2*do*, et per totum, D.

De rei vindicatione; l. 19, p. 13. D. De auro et argento legato; et l. 30 D. de usurp. et usucapionibus; l. 7, p. 2. D. Ad exhibendum.

On the other hand, it was reasoned, That statutes were *strictissimi juris*, and we were not to disced from their letter, neither were they to be screwed up or extended by a notional equity or pretended parity; that they being composed of disparat materials, they could not be truly termed silk stuffs, nor fall under the compass of a prohibition laid upon silk stuffs; that in the law of accessions the most precious thing was not ever the principal.

This deliberation took no result or conclusion; only I have observed the most part of people to have ventured upon moyhairs, which wants not its own difficulty and danger, till the ambiguity be removed. But to be convinced how raw and ill contrived that act is, in causing a multitude of doubts, see in the animadversions upon that sumptuary law beside me.

Advocates' MS. No. 389, *folio* 215.

1673. *June* 2. LADY WAMPHRAY *against* The LAIRD.

THE Lady, with concourse of sundry of her friends, having raised a Reduction against her own husband, and his brother Sheins, and others, his friends, of her contract of marriage and disposition of her estate, whereof she was heretrix to him, by reason of minority and lesion; it was objected, she could pursue no actions without the concourse of her husband, much less he opposing them, and, least of all, actions against himself; that women, because of the fragility and shamefacedness befitting their sex, were, by the law of God, of nature, and of the Romans, and the municipal laws of all other nations, *in manu, potestate, et custodia, vel patris vel mariti*, and were *sub perpetua eorum tutela vel cura;* and being married, had no more *personam standi in judicio* without their husband, than a pupil or a minor had without the authority of his tutors or curators interposed. Yea, *Gellius, Noctium Atticarum libro* 10, *cap.* 23, tells us, that *vir* was *mulieri judex*, out of Cato. And *Bodinus*, p. 25, *De Republica*, cites the same Cato persuading the Oppian Law to the people, for reviving the power of husbands, for having their wives *in perpetua tutela. Maritis reverentia est exhibenda, l.* 14 *D. Soluto matrimonio.* See *Calvinum, in Lexico, ad verbum* Uxor. Charron on Wisdom, 2, *cap.* 46, *p.* 170.

It was ANSWERED, That *regulariter* the husband must indeed concur in all the wife's judicial actings, yet he being naturally bound to assist her in all her lawful pursuits, if he shall refuse, the Lords, in such an emergent, or in other singular cases and special considerations as they see just, will ordain him to concur, and in case of refusal, authorize her by herself. And which is no novelty, but marked by Dury and Hadington to have been done on the 9th of January, 1623, Marshell *against* Zuill; yea, Dury at the 13th of July, 1638, tells us, the Lords granted inhibition to the Lady Glenbervy against her husband; and the same Dury in a case exactly parallel with ours, at the 8th of July, 1642, Inglish *contra* Aitkit, observes, The Lords sustained process at a wife's instance against her husband, for reducing her contract of marriage, *ob minoritatem*, he reclaiming and disowning the same