ANENT TESTAMENTS.

It was queried if a testament, whereof the dead's part in the inventary exceeds £100 Scots, (for, if it be within that, there is little doubt,) be only subscribed by one notary, if it be null by Act 1579, requiring two notaries and four witnesses to all writs of importance, which is interpreted to be writs above £100 Scots. Some thought it valid, because *ultimæ voluntatis liber debet esse stylus, et liberum quod non iterum redit arbitrium. L.* 1 *C. de S. Sanct. Eccles.* 2*do*, By Act 1584, one minister is declared enough; *ergo* also one notary. Others thought it null; and that the argument from a minister to a notary was not good, the law reposing more confidence in a minister's faithfulness than in a notary's.

The Lords indeed have found contracts of marriage, subscribed only by one votary, valid, if marriage hath followed thereupon; Durie, *ult. February* 1637, *Lockhart*; *ult. January* 1639, *Dundas.*

The Lords found a testament privileged; and that it needed not two notaries and four witnesses; Hadd. 18*th January* 1623, *Boog* against *Hepburn.* See Stair, *tit.* 30, and *infra*, 23*d June* 1680, *Ogilvie.* *Vol. I. Page 53.*

1679. *July* 28.

A WRIT, consisting of more sheets than one, was quarrelled as null, because not side-subscribed. The party user offered to get it side-subscribed; upon which the Lords allowed him to do it. *Vol. I. Page 54.*

1679. *July* 29. JAMES MILLAR *against* CRAMOND.

IN James Millar's suspension of a decreet, obtained against him, by one Cramond, a surgeon in Kelso, for curing him of a *hernia:*

The Lords, having considered the probation of the employment, and furnishing the drugs, and finding that it was very slender, and did not condescend upon particulars and the quantity furnished, and that some of the witnesses were women; yet, in respect there was somewhat proven, they took the pursuer's oath in supplement of the probation. *Vide* 31 *D. de Jurejurando.*

Vol. I. Page 54.

1679. *July* 30. JOHN EWART of MULLOCK *against* SIMEON COOPER, Minister of Kirkcudbright.

IN a bill of suspension, presented by John Ewart of Mullock, against Mr Simeon Cooper, minister of Kirkcudbright, for his stipend, upon this reason,

That his teind was by law exemed and privileged, and not liable in payment of ministers' stipends, or any other burdens, because he held his lands of the abbacy of Holyrood-house, *cum decimis garbalibus inclusis*; *et decimæ inclusæ* were free by law:

ANSWERED, for the minister,—That *decimæ garbales inclusæ* were only the *decimæ minores*, the vicarage; and the minister charged for the parsonage.

REPLIED,—It was a great error to interpret *garbales* the vicarage; and which was sufficiently confuted from Craig's authority; and Skeen, *de Verb. Signif. voce Garba Sagittarum*, tells it signifies a sheaf; and in the same sense it is taken by Guillim and other heralds, in their books of heraldry, where they speak of the bearing of *gerbes*; and *herba*, in Latin, comprehends corns as well as herbs; and so in the Italian language: and, in our style, parsonage teinds are more frequently expressed by *garbales*, than either by *decimæ rectoriæ* or *decimæ prædiales majores*.

This being reported to the Lords, they found *garbales* signified parsonage teinds.

Thereafter it was ANSWERED, for the minister,—That Ewart had been in use of payment forth of these teinds; *ergo*, they were not exemed; and *triennalis possessor non tenetur docere de titulo in beneficialibus*.

REPLIED,—Any such voluntary erroneous payment could not bind him to payment *pro futuro*, especially where we condescend upon his title that it is *invalidus et vitiosus*. The last point was taken to interlocutor.

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1679. *July* 30. SIBBALD *against* RALSTON.

IN the case of Sibbald and Ralston, the reason of suspension was, That the bond was discharged. To this it was ANSWERED,—1*mo*, The discharge related to another sum; and the general clause on the margin, of all other debts or bonds, was most suspicious, and adjected since, with another hand and other ink. 2*do*, The debtor, by a letter posterior to that discharge, had acknowledged the debt, and craved a time to pay it.

REPLIED,—The discharge was opponed, and the letter was holograph, and not clear that it meant this debt.

This being reported, the Lords, in respect the marginal note was vitiated, and the letter was posterior to the discharge, found the letters orderly proceeded, notwithstanding of the discharge. *Vol. I. Page 55.*

1679. *July* 30. BOOG *against* JOHN MUIR, Stabler.

IN the competition between Boog, and John Muir a stabler, in a removing; Newton refused to sustain seven years' possession, as sufficient to prefer in a removing against an infeftment which was prior in date; but he confessed that seven years' possession was sufficient in an action for maills and duties, (which is a possessory judgment,) against an infeftment prior in date; only found the