

* 11. The Lords of Session did pass a Bill of Advocation of a cause from an Inferior Judge ^{in which it was} ^{undoubtedly} ^{competent upon this Reason, that there was a compulsion of Double Rights. Albeit some of the Lords} ^{were of opinion, That the a cause wherein there is a Question of Double Rights may be advokated} ^{if Interece appear therein, there ought to be no Advocation upon pretence of Double Rights, unless} ^{there is no difficulty. Because Inferior Judges have as Good Right to the Jurisdiction of causes} ^{competent before them as to any other person, and if it were otherwise, the Jurisdiction of Inferior Judges} ^{would be altogether evacuated, and the Lords incumbered with processes that may and ought to be} ^{determined by Inferior Judges contrary to act 39 in fine per bond oblatio per 3 Ch. 2 and} ^{others. For their Removings Actions of mauls & duties and the like Real actions where a} ^{Justice is found on a Right or when parties appearing for their Interests reduced Rights,} ^{it may always be resolved that the Question is concerning Double Rights, D. 10. l. 25} ^{June 1675 Dec. 27.}

* 12. In a cause for payment of a Bond purfuit before an Inferior court that was competent to judge ^{therein was Advokated upon this Reason that there was an Improbation of the said Bond depending} ^{before the Lord of Session, and continencia causa non debet D. 1. l. 2 July 1675 40th of Bonner} ^{contra His Responfionibus offer'd by D. 10. l. 25.}

* 12. In a purfuit at the Instance of a Minor against his Tutor after she was married, the pursuer having ^{expressed to her oath that she had Intromitted by her marriage with D. 10. l. 25 particularly belonging} ^{to him. The Husband of the Tutor pleaded that she could not declare to his prejudice. It was argued,} ^{That the pursuer Intromit & jus quietum against his Tutor could not be in a worse case as to the} ^{modus probandi by her husband inducing a Husband. And her Intromission being such as could not} ^{be known to any person but her self nor proband otherwise than by her oath, it was said that the} ^{minor should be absolved of his proof by her own deed. For this is not a case where a debt is} ^{to be constituted only by a wife's oath, but the ground of the debt is constitute by will, viz} ^{by the nomination or Letter of Tutor. And when a pursuer commences against any} ^{person, that person cannot by assignation cut off the pursuer from his proof by the Deeds} ^{oath. And all more are more prohibited at Law ought so far to be favoured as not to allow} ^{their Tutor to Ruin them conbolando ad locandas nuptias and redditus Rationes. The} ^{Lords thought the case considerable: And ordain'd the Tutor to declare upon oath referring} ^{to themselves to confide what her Declaration should import 15 February 1676 Marshal} ^{contra Torroff and her Husband? 2. 2.}

* 1. one who had notice that a privateer whom he suspected to be a privateer had taken a ship freighted with ^{Sails and other Timber upon the north coast of Scotland having bought a parcel of the said Cargo} ^{from him, and the person with whom he bargained being found afterwards to be a privateer and the said} ^{Ship to be a ship unjustly taken by the privateer: The Buyer pursued the owners of the Cargo to} ^{recover and found and declared that he had for their Advantages made the said Bargain; seeing} ^{otherwise the privateer might & would have carried away the said Ship and Cargo, or if not having} ^{men enough in company to navigate both his own and that Ship would have burnt & destroyed it And} ^{that his owners ought to assist & make up to him what he had given to the privateer for the said} ^{parcel of Sails & Tross for their Advantages: It was pleaded for the Defendants, That they have} ^{not vend. ratio offer may claim & recover their own Ship and Goods, who sell them, For,} ^{res quibus est extra commercium & negotia infamata: you persons who have bought them} ^{without being liable to refund the price. Now privateers are of all Trades the greatest. And being} ^{by the Law of Nations and others breaking bulk and spoiling all their own Handicraft Ship} ^{or cargo taken by them in fact, or any way thereof without being first declared a lawful privateer,} ^{are looked upon as pirates, and those who buy or get such Goods from them as Receivers;} ^{and seeing the pursuer had suspicion that the seller was a privateer; He was in possession of} ^{the Goods in possession of the seller, and he had any dealing with him. Nor can he pretend to have been} ^{negotium as to the owners. Seeing that is only negotium Gestio, which a Friend in absence} ^{of the party concerned does him a good office or animo and upon no other consideration than} ^{that he may not suffer prejudice, and so contract or quasi contract with the person who's negotium} ^{gestio; whereas in this case the owners were altogether unknown to the pursuer, and he evidently} ^{intended only his own Interest, in so far as he being a seller that known to be under the cha-} ^{racter of a person apt enough to take the occasion of profitable Bargains, and not buy} ^{the whole Ship and Cargo for Advantages, but only a parcel of the Cargo at a very easy} ^{Rate and great undervalues; and when the Ship was brought to shore he did not refer to any magistrate,} ^{that it should be sold to go forth coming to those having Interest. It was Argued for the} ^{pursuer that upon all the said professions he had necessary as Improbans allowed to them.} ^{So which it was disputed, That such allowance is only given in the case of expenses laid out} ^{by persons in possession of the goods which otherwise would possibly could not be} ^{prohibited from him without such disabilities or in such like cases. But privateers Pirates} ^{and Receivers cannot pretend to have Reputation of the price paid by them, the same not being} ^{Impensa but pretium. Some of the Lords were of opinion that there was no foundation} ^{for this purfuit, and that there was ground to confide the pursuer as a Receiver} ^{whose practice should not be encouraged. But others being of opinion, That the pursuer} ^{having purchased the parcel bought by him, and a bought arising to the owners by his Trans-} ^{action his case was favourable: The Lords Recommended to the parties to settle the said} ^{Decree 14 June 1676 Cornelius N. D. l. 25. Contra offer'd by D. 10. l. 25.}

* 2. In the opinion of the Doctors of the Civil Law the Buyer of a thing stolen upon in a publick Fair ^{or market is bound to restore it to the owner without being bound to give him the price given for it in the} ^{seller's price. Form. D. de furtis quest. 177 n. 31.}

* 3. The negotium Gestio or De in Rem verso is not competent to one who does another's Business by ^{order of a third person without Intention to serve him whose affair he managed. But he can only} ^{pursue in the name of his Employer qui facit per alium and whose fault he followed. In} ^{which case all objections and Defences that lie against the Employer will be effectual against} ^{him 20 June 1726 Johnston of Westhall contra Marquis of Anandale.}