

LADY CORSBIE *against* The LAIRD of CORSBIE.

THE Laird of Corsbie, by ordinance of Secret Counsel, gives a bond to his wife, to pay to her the sum of 800 merks for a year's entertainment, and to deliver to her all her clothing which he had of her: upon his bond, his wife raising a charge to deliver a number of particular pieces of clothing of great avail; he suspends, that a charge could not be given to him upon a general bond, without probation. The Lords ordain the charger, first to prove the particulars, before a charge could be sustained for them.

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NINIAN HAMILTONE *against* JOHN SYME.

ISABELL Hamiltone, sister to Ninian Hamiltone, was married to John Syme, at the mill of Aberdour, in September 1634, and deceased in November 1635, leaving a son called Robert, who was confirmed executor to his mother, but not served heir, and, after his mother's decease, lives two years. Before the contract of marriage, John Syme received four thousand merks of tocher, for the which she was infest in the said mill of Aberdour, and is obliged, if J. S. her spouse decease before her, to pay to the heirs to be procreated of the said marriage, two chalders victual yearly, for their education; and J. S. is obliged, if there be no heirs of the said marriage, to pay to the said Isabell, her heirs, executors, or assignees, the sum of 2000 merks, in contentation of all the moveable goods and gear which may fall to them through her decease. Ninian, brother to the said umquhile Isabell, is confirmed executor *ad omissa* to his sister, and therein has confirmed the said 2000 merks, and obtained decret thereupon, before the commissaries of Dunkell: which the said John Syme has suspended, and seeks to be reduced for the self-same reasons,—*1mo*. The bond is conditional, in case there be no heirs; which condition fell not out the time that the bairn confirmed the mother's testament, and so there could be no dative taken *ad omissa*, because the debt was not *in rerum natura*; neither could be, so long as the bairn lived. To the which it was answered, That the pursuer could have no other way to pursue for his debt, but by taking the said dative *ad omissa*; and, in this case, the word *omissa* is not taken *privativè*, but *negativè*, *quasi non confirmata*. Which the Lords sustained, to give the brother action to pursue the debt *quando extitit conditio*.

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ROSS *against* M'REULE.

THE minute of an instrument of resignation, noted in the back of the procuratory, and subscribed by the notary; after the notary's decease, is desired by a summons to be extended, and given out under the Clerk Register's subscription;