

which failing, to the said Mr David his heirs whatsoever. The sum of the tocher contracted by the said Captain Andrew bore annualrent. After the term of payment, Mr David contracted a lingering disease, and, about six weeks before his death, he makes an assignation of the said 5000 merks of tocher, resting unpaid thereof; 3000 merks to his wife, and 2000 merks to his sister Margaret Ayton her bairns; which Margaret, after her brother's decease, being served heir to her brother, intents a reduction of this assignation of 3000 merks made by her brother to his wife, as done *in lecto ægritudinis*, in prejudice of the heir. It was excepted, That notwithstanding of the destination contained in the contract, yet, the sum not being employed, remained still moveable, and might have fallen under escheat; in respect whereof, he might have disponed thereupon by testament or assignation, as he pleased, *etiam in lecto ægritudinis*. Whereunto it was replied, That albeit it remained moveable, yet the obligation contained in the contract could not be altered on his death-bed, in prejudice of the heir. Which exception the Lords repelled, in respect of the reply.

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1635. *March 24.* GORDON of TULLUCHANDIE *against* MARGARET and ANNA KEITHS, and their HUSBANDS for their Interests.

DAUGHTERS, after marriage out of their mother's house and good-father's house, without consent of their mother, cannot be pursued for their aliment bestowed upon them before their marriage; for it were hard to deceive their husband of a part of their tocher by this action.

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1635. *March 24.* LORD YESTER *against* The LAIRD of INNERWICK.

A BOND being comprised, the compriser may use charges thereupon, summarily, against the granter of the bond, as well as if he were made assignee to the bond.

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1635. *July 3.* GEORGE MITCHELSON, Chirurgion in Edinburgh, *against* ELISABETH MOUBRAY.

A RATIFICATION made by a wife, *stante matrimonio*, of a comprising of a tenement of land, wherein she was infeft in conjunct fee, deduced against her and her husband, for a sum contained in a bond made and subscribed by her husband and her, *stante matrimonio*,—which ratification was made judicially before a bailie in Edinburgh, in a court, and subscribed by the town-clerk,—was null, because it was not subscribed by the wife herself.

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