

1649. June 29. RODGER *against* JAMES BINNING.

IN the suspension pursued by Rodger against James Binning, the reason was libelled, that, before payment, the said James should subscribe assignation against the cautioner his heirs, contained in the first bond, according to his promise; as also, according to a clause in the second bond, tying him to deliver both the bonds to the suspender the time of payment-making; which importeth assignation, or else the re-delivery was not much profitable. But the charger denied the same, being referred to his oath; for that, to free the poor minors, bairns to the deceased cautioner, was according to conscience. He discussed, first, the principal, and, if Rodger had not intervened by his posterior bond, he would have laid in ward his principal debtor, whom he had then in hands. Likeas, the Lords found that the foresaid words of the bond did not import assignation, and yet was profitable *ut constaret de relato, sicut de referenti*; and the said James, being paid, should keep neither of the bonds.

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1649. June 29. NEILSONE *against* CRANSTOUNE.

IN the suspension at the instance of Neilson against Cranstoune, for a cure in chirurgery, decret having been given by the commissaries of Edinburgh beyond the injunctions; the reasons, in effect, were to have modification. The Lords were loth to meddle in it, in respect of the pursuer his oath taken *in supplementum*; yet desired them to hear chirurgeons thereanent, and to report.

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1649. June 30. HERIOT, LADY POWRIE, *against* JAMES GRAHAME of MONORGUNE.

IN the action of mails and duties pursued by Heriot, Lady Powrie, *first*, against Mr James Grahame of Monorgune, alleged heritor of Lawlethime,—it was excepted upon an infetment from the Laird of Fentrie his brother, who had disposition from the Laird of Powrie, her husband, and was infet therein: neither could the pursuer her prior infetment be respected; because, proceeding on a bond from her husband, *stante matrimonio*, for love and favour, which is *donatio inter virum et uxorem*, prohibited in the law *ne mutuo amore se spolient*;—*FF. et C. de Donat. inter Vir. et Uxorem*;—and so revokable, and was *de facto* revoked, in so far as the said Laird of Powrie did alienate those same lands to the said Laird of Fentrie. Whereunto it was replied, That there could be no tacit revocation understood here, to her prejudice; since her husband had given to her the said lands, under reversion to him and his heirs-male, for ten merks, which he never did redeem; and farther, that the defender, knowing of this, at least the Laird of Fentrie, author to him, did take infetment of the lands of Powrie in warrandice. Whereunto it was duplied, That, in respect of that reversion for a small sum, it was much more revokable, and ought to be revoked