

videtur quod nullo jure cogente conceditur. L. Donari, 29, in pr. ff. De Donat. et L. Donari. 82. De Reg. jur. ff. ubi Cujac. Si, jure naturali cogente, concedatur, donatio non est. L. hoc jure, 19. sect. si quis. ff. De Donat. et ex ead. L. 19, sect. 1, ait remunerationem non esse donationem, quod non pertinet ad casum nostrum, sed ad leges certum donationibus modum statuentes, et ad tit. de revocand. donat. Cod. remuneratio enim non est mera liberalitas, sed quasi merces et pretium. D. sect. 1, et L. pen. sect. ult. eod. ff. L. si ut certo. 5, sect. nunc videndum commod. L. 2, sect. et generaliter vi bon. rapt. ff. et naturaliter debetur. L. sed etsi 25, sect. consuluit. 11. De pet. hæc. L. si pignore, 54, sect. 1. De furt. ff. At donatio, ibid. ab eo definitur mera liberalitas, quæ in alium, nullo jure nullaque ratione cogente, confertur; et ait regulæ illi jungendas, L. Vir usuras, 54. De Donat. inter Vir. et Uxor. cum L. si quis pro. 21. sect. si uxor eod. ff. Est Annodii in declam. pro filio contra patrem, Quod non licet subtrahi, non possumus dicere id liberalitate conferri. Adde Senec. lib. 3, de Benef. c. 21.

And, in this case, the goodsir to the defender, father to the said Gideon, was *debitor, ex contractu matrimoniali*, in a certain sum; the triple whereof he grants to have received, suppose not in satisfaction of the said lesser sum, but for renouncing of the said infestment: which must be presumed to have been given in satisfaction of that debt; otherwise, a father, out of the natural bond of affection, may provide his son to a portion of land, and, after that, to another portion, and both stand effectual; as was decided betwixt the Earl of Marr and his son, Henry, and his oy, the Lord Cardros. There was also something alleged out of lawyers, *de debito conventionali et legali, et an dos imputetur in legitimam. Item*, That the foresaid infestment was given to him when he was only twelve or fourteen years old; where, by the contract of marriage, he could not have the 4000 merks while he was past twenty-one years. Yet it was a true debt, *et dies cessit licet nondum venerit*; and the father might have paid before his day, howbeit the payment by the grant of 12,000 merks received was made after he was twenty-one years. Neither did he ever call this in question during his father's lifetime, who lived sundry years thereafter, he living with him, and reaping the benefit of his liferent; and not only meddling with all the plenishing after his decease, but detaining violent possession, (with Caddell of Aslowne, who married his sister, and got 7000 merks of tocher, by and attour other seven given with the other two sisters,) until these were all put from their violent possession; and entering in bargain with Forbes, the pursuer, did make assignation, among other bargains, for little acknowledgment; and being a simple man, was sent away to Holland with his sword.—See page 452.

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1650. January 2. ROBERT LOGANE against —————.

IN that removing by Robert Logane, as having right from James Logane, his father, who, after that he was denuded of the superiority in favours of his eldest son and daughter-in-law, by virtue of their contract of marriage, and a base infestment, was retoured heir to the proprietor, and that to be holden of himself, because his son's and good-daughter's infestment was never confirmed by the town of Edinburgh, superior to them all;—the Lords would hear the cause, in

their own presence, in favours of the good-daughter and her contract of her marriage ; and they thought that the confirmation might be drawn back. But, what benefit can it work but only for the superiority ? seeing the said umquhile James, being nearest kinsman to the defunct, that was proprietor of the lands, might retour himself heir, and dispone that supervenient right to any man, without doing prejudice to them who had right to the superiority.

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1650. *January 2.* LOCKARD *against* JAMES BROWNE.

IN the action of reduction at Lockard his instance, *super capite inhibitionis*, for one poor 100 merks, against James Browne, cordiner, for reducing of his infestment, flowing by progress from umquhile Edward Johnstoune ; against whom decret was obtained, *jure mariti*, and against his wife, the debtor principal ; the same decret having been suspended by the said Edward and his wife, and the letters found orderly proceeded ;—the Lords would hear it *in præsentia*, as if it were coincident with that of Scot of Hartwoodmyres, and did concern all husbands called for their interest in any process : suppose it doth not, as I think ; because, in this case, *res transiit in rem judicatam*, not only in the first decret, but also in the decret upon the suspension, where the said umquhile Edward was principal suspender.

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1650. *January 3.* GRAHAME *against* The EARL of ANNANDALE.

IN the action of exhibition at Grahame's instance against the Earl of Annandale, the exception was sustained, That there could be no charter-chest of the writs of the lands of Bl—wood, comprised from them, exhibited by the defender, seeing the reversion of the comprising was long ago expired ; but, as for any other writs that did concern them, the said Earl was ready to exhibit them upon oath.

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1650. *January 3.* ADAM GALT *against* JEAN NICOLL.

IN the suspension Adam Galt against Jean Nicoll, who had given 500 merks upon the wadset of his lands, with a back-bond for payment of 40 merks yearly,—the reason was repelled as irrelevant, bearing, That the suspender had a back-tack set to him for terms to run, the time of the warning, whereupon the decret of removing now craved to be suspended was obtained by the charger ;—who then replied, That the said back-tack contained an irritant clause, that, *viz.* if three terms ran in the fourth unpaid, the said back-tack should expire without any declarator ; and if it did bide any, the same should be done before the bailies