

never delivered till on death-bed, or did bear that they should be obligatory, as well delivered as undelivered. But the Lords gave no opinion of judgment, at this time, as to these cases.

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1669. *July 21.* ANDREW WHITE of THURSTO *against* ELIZABETH MAXWELL.

IN a double poiding, raised by John Mitchell of Balvardie, as debtor to John Maxwell of Dalswintoun, by his bond; Andrew White of Thursto craved to be answered, as being creditor to Dalswintoun, and having arrested; and the said Elizabeth craved to be preferred, as having right from Sir Henry Nisbet, who was assignee, constituted by Dalswintoun, to the said bond.

It was ALLEGED, That the assignation was *inter conjunctas personas*, Sir Henry being Dalswintoun's brother-in-law; who, without any onerous cause, transferred his right to Dalswintoun's own daughter, who was then *in familia* with her father.

It was REPLIED, That the assignation could not be taken away *ope exceptionis*; but by reduction, upon the Act of Parliament 1621.

The Lords found no necessity of a reduction; but ordained, that Elizabeth should condescend upon the onerous cause; and, if the assignation was purchased by the means of the grand-mother, as was informed, or the means of any other person than her father, and what way she could prove the same.

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1669. *July 22.* The RELICT of MR GEORGE PATERSON *against* His CREDITOR.

THERE being a decret recovered against the relict, as vitious intromitter with her husband's goods, in so far as she had received the sum of £60 Scots, due to her husband by the Earl of Wintoun; she did suspend, and intent reduction upon this reason,—That the decret was before an inferior court; and she, being an ignorant woman, her procurator did omit to propone several defences upon writs, which she now produced. *viz.* an assignation by her husband to that sum, and that she was decerned executrix-creditrix upon her contract of marriage.

It was ANSWERED, That the decret was *in foro contradictorio*, wherein liti-contestation was made, and, after probation, sentence pronounced.

The Lords did repone the suspender, notwithstanding, in respect of her condition, and that the reasons were instantly verified; and that decret against her, as vitious intromitter, made her liable to her husband's whole debts; but ordained her to pay the whole expenses. This was done, *me reclamante* and several others of the Lords, as being law and form of process; and the case being

different from reponing against decreets, where the parties are holden as confessed, because of not compearance to depone; against which the Lords do often repone, when the parties have lawful defences.

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1669. July 22. LEITH *against* The EARL of MARSHALL.

IN the foresaid action, Leith, upon his right *jure mariti*, for the sum upon the wadset, being required, as said is,—it was ALLEGED, That the requisition could not make the sum moveable; because, by the pursuer's own charter produced, the clause of requisition therein narrated was not *ad hunc effectum* to make the Earl of Marshall personally liable, so that he might be charged with horning for payment; but in case of requisition, and not payment, Elizabeth Keith, spouse of the said Leith, was only to have possession of the lands and not to be redeemed until she should be paid of 12,000 merks, which was 2000 merks more than her portion.

The Lords found, That the requisition contained in the charter granted by the Earl of Marshall, being only in the terms foresaid, that the requiring of the sum did not make the same moveable, so as to give right to the husband *jure mariti*; but declared, that the contract, to which the charter was relative, should be produced, to the effect they might see, if the Earl of Marshall was personally liable upon requisition, and that execution might be raised against him.

In this process, these points were likewise debated; 1st, Whether or not the husband, after marriage and requisition, having continued to possess the lands, and to intromit with the maills and duties, and hold courts, it was a passing from the requisition, so that he could never recur thereto, and crave the sum as being moveable? 2d, If both the wife and husband, having dispoed the right of wadset to the husband's brother, they could recur to the clause of requisition, and crave the sum as moveable.

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1669. July 24. CHILDREN of SHORSWOOD *against* MAGDALEN SHORSWOOD.

IN an exhibition and delivery, pursued by the children of the brother and sister of Thomas Shorswood, against Magdalen, another sister, of an assignation to an heritable bond granted by Cunningham-head to the defunct: It being ALLEGED for the defender, That she, being heir-portioner, was not obliged to deliver the same; seeing it was never delivered by the defunct himself; without which the pursuers could have no right, the bond being heritable:—It was