1677. *July* 12. JEAN DOLBY and PATRICK LAUDER *against* WILLIAM HOG.

IN the case of Patrick Lauder and Jean Doby, his spouse, and William Hog, her son, the Lords found, where a party had given a bond obliging himself to submit, it was equivalent to a submission; as an obligement to discharge, if it be simple, is a discharge upon the matter; only, in regard the year was expired, (and indefinite or blank submissions in construction of law stand only for a year,) after the date of the bond, and the woman submitter was now, *medio tempore*, clad with a husband, and one of the parties arbiters was dead, (in whom, *eligitur industria personæ*,) they found the bond to submit could not bind, because it could not now take effect.

The said Hog having also raised reductions of the said Jean her decreet of adjudication, proceeding on the provision and clause of conquest in her contract matrimonial; see seven or eight reasons of reduction in the information beside me, with answers thereto. I shall only mention one, viz. that the decreet was null andwithout probation, because it did not prove the time of her husband's decease.

REPLIED.—Though [she] might be admitted *hoc loco* to prove it yet, to fortify her decreet, (see Stair's Decisions, *November* 29, 1662, *Somervell* and *Newton*:) yet she needed not, because having libelled a definite time, viz. the month and year when he died, and there being compearance, and that time not denied, [she] was not obliged to prove any more than what they put [her] to prove, and, consequently, was liberated from that. Which was found relevant.

Upon another reason in this reduction, viz. a woman being provided to the liferent of a sum for her jointure, and likewise to the liferent of the conquest, if the most of what her husband leaves was conquest, and she crave the liferent of that *primo loco*, and would cast over the other provision to be supplied by the heir out of the stock and fee: The Lords find this calculation ought not to be suffered; but, *primo loco*, the liferent of that sum must be made up to her, and then she may claim the liferent of the remanent as conquest; for conquest is only *deducto ære alieno*; now the former provision is a debt, and so to be defaulked.

See M'Keinzie's Observes on the Act of Parliament 1621, p. 74.

Advocates' MS. No. 603, *folio* 293.

1677. *July* 12. JAMES SOMERVELL *against* WATSONE of Damhead's CREDITORS.

JAMES SOMERVELL, usher to the Exchequer, gave in a bill to the Lords thereof, shewing that he was donatar to Watsone of Damhead's escheat, and sundry creditors had poinded the escheat goods, and therefore craved their warrant to force redelivery. This, as illegal and arbitrary, was denied, he not so much as having declared his gift generally, and their poinding being *authore prætore*.

I remember, in *November*, 1676, in the case of *Grant* and *Grant*, one who was convened as vitious intromitter was assoilyied, because he was donatar to the defunct's escheat, though the gift was posterior to his intromission, and was never de-

clared. Which seems not to want its scruple. This I read in the President's collection of decisions. *Advocates' MS. No.* 604, *folio* 293.

1677. *July.*

THE Lords made an act discharging the clerks to give up the principal minutes to the parties, or their advocates; because thereby the extracting of acts is ofttimes much retarded. *Advocates' MS. No.* 605, *folio* 293.

1677. *July* 17.

THE Lords were this day upon an act of Sederunt, that the clerks to the bills should be liable for the responsality of the cautioners received, and that *in subsidium.* See this debate in another paper-book.

2*do*, That bills of suspension within eight days after presenting, if they be not past, or an act in them, the charger shall, *ipso facto*, have liberty to proceed in his diligence without any more.

See my summary of the Sederunt-books.

Advocates' MS. No. 606, *folio* 293.

1677. *July* 17. M'KEINZIE of Suddy *against* ROSSE of Kilraick.

A WIFE called Margaret Andersone, being liferentrix of lands, does, with consent of her husband, assign and dispone her liferent right in favours of another person; he transfers it to a third, and a third to a fourth. This fourth grants a backbond to the husband, declaring, that for onerous causes, the right of the liferent is the husband's.

This was quarrelled, as *donatio inter virum et uxorem*, in construction and interpretation of law, though done *per interpositam personam*, and so, as revocable *tacite vel expresse*, since *quod non licet directo, nec per obliquos licebit cuniculos.*

ANSWERED,—It had gone through many hands, and past to singular successors. 2*do*, Its returning to the husband made it not a *donatio*; because *ab initio*, (which is ever to be attended,) it was not a donation flowing from the wife to the husband, *stante matrimonio*, but was come in his person, for some new onerous cause.

The Lords found the conveyance was to be presumed to have been merely done *animo fraudandi legem;* and wherever appears a design *fraudem legi facere, ejusque mentem circumvenire*, there it annuls the deed; and found it was *vitium reale* that followed and affected it *per mille manus;* and so declared it to be a donation and revocable.

They had decided the same thing formerly in *Wolmet's case*, in 1663. See *Alex-*