though with a resolutive condition, in case of children. This plea was agreed and taken up before interlocutor.

Page 19, No. 100.

1682. *February.* The CREDITORS of the ESTATE of FRENDRAUGHT *against* the VISCOUNT and BOGNY.

THE Viscount of Frendraught, in order to acquire from one Gregory an expired apprising of his predecessor's estate, and yet to evade the Act of Parliament about purchases made by apparent heirs, provided, in his contract of marriage with the Lady Rutherfoord, who had 20,000 merks of tocher heritably secured, that he should give her a jointure; and, by a separate writ, of the same date, renounced the tocher, and declared, that it should be employed on security for her and her children. The Lady and her friends, after the marriage, acquired Gregory's apprising in favours of a blank person, in which, after it had lain some months blank in the Viscount's custody, the name of Bogny, the Viscount's chamberlain, was filled up: who, by his back-bond, provided the lands to the Viscount and his lady in liferent, and to the bairns in the marriage in fee; which failing, to the Viscount's heirs and assignees. In a process against the present Viscount, (his father being dead,) for redeeming the apprising from him, upon payment of the sums truly paid for it;—the Lords found the conveyance fell under the Act of Parliament. *Vide* No. 341, [Marjoribanks' Creditors *against* Marjoribanks, February 1682.] *Page* 25, No. 129.

1682. *February.* MONTGOMERY *against* HAY.

A BOND, bearing to be payable to a husband and his wife, (without mention of conjunct fee or liferent,) and the fee to the heirs of the marriage, was found to import a liferent to the wife.

Page 38, No. 172.

1682. *February.* SIR PATRICK HEPBURN *against* MARY BRUCE.

DOUGAL Macpherson having taken a bond, whereon infeftment followed, to himself in liferent, and his son in fee, with power to him, the father, to uplift and dispose of the money, without the son's consent,—which Dougal did afterwards discharge in favours of his son, who married, and died,—the son's relict, as creditor to her husband, to whom the father was liable by the warrandice in the discharge, having raised a process against the father, for declaring her husband's right to the bond, and inhibited him thereon; Dougal thereafter disponed the heritable bond to Sir John Falconer, for the value to be paid to Sir Patrick Hepburn, who, as creditor *ab ante* to the disponer, raised the reduction of the discharge upon the Act of Parliament, 1621; and the son's relict raised re-

duction of the disposition, *ex capite inhibitionis.* Alleged for the relict, That the reduction of the discharge would signify nothing; seeing, the faculty being personal, and not affected by diligence before Dougal's death, it is expired, though there were no discharge of it. Answered, The disposition was an exercise of the faculty, and made the fee Dougal's, so as it might be affected by his creditors. Replied, The disposition is reducible *ex capite inhibitionis*, as being made after the disponer stood inhibited at the instance of the son's relict; and the making the price payable to Sir Patrick Hepburn was a gratification against the Act of Parliament, 1621. Duplied, Though the inhibition should take off the effect of the disposition, yet the disposition was such an act and exercise of the faculty, as hindered it to expire by Dougal's death, as well as if he had uplifted the money, and paid it to Sir Patrick Hepburn. The Lords found the faculty was expired by Dougal's death, and not affectable after his death.

Page 38, No. 176.

1682. *February.* MURRAYS *against* MURRAY.

THOMAS Murray, late bailie of Edinburgh, having granted bonds of 7000 merks to each of his three daughters of the first marriage, in satisfaction of their portion natural, and what they could claim as nearest of kin to their father, which were paid at their respective marriages; and having afterwards granted bonds of 7000 merks also to each of his three daughters of the second marriage, expressly in satisfaction of legitime, &c. and by his testament having left all his six daughters universal legators, as the dead's part; the Lords, 16th July 1678, "found, That the bonds of provision to the children of the second mar-"riage, not being granted *in lecto*, were to be taken off the whole head of the "executry as a debt; and that the half of the free gear, after deduction of "these and other debts, belonged also to the bairns of the second marriage, "and the other half belonged to the bairns of both marriages equally, by the fa-"ther's legacy." It being afterwards found, upon probation, "that the bonds "of provision to the children of the second marriage were granted on deathbed;" the children of the second marriage pursued those of the first, for the half of their father's moveable estate, as due to them for their legitime, upon this ground, That the children of the first marriage were forisfamiliated; and claimed payment of their bonds of provision out of the other half, and that the superplus ought to be divided among the pursuers and defenders, conform to the universal legacy. Alleged for the children of the first marriage: Albeit bonds of provision, granted on deathbed, have only the effect of legacies, they must be imputed in satisfaction of the legitime due to the children of the second marriage, so as they cannot claim both the half of the goods as legitime, and seek the bonds of provision as legacies out of the other half as the dead's part; because, by the civil law, whatever was left by parents to their children, by testament or legacy, was always imputed in satisfaction of their legitime, as appears from the title *ff. de Inofficioso Testamento;* and the reason is, for that the legitime is given as a maintenance to unprovided children, which ceases when they get their portions, and *debitor non præsumitur donare:* but what was given by parents to their children *inter vivos*, was not imputed in the legitime, because parents in