

in this cause, *viz.* That the daughter could not legate sums in prejudice of her mother and uncle, who were substitute to her. *Vide* No. 354, [Bonnar against Arnot, February 1683 ; Dict. p. 12,976.]

Page 41, No. 185.

---

1683. *February.* OGILVY *against* JAMES HUME; and FAIRY *against* CRAIG-DARROCH and LAG.

IN a pursuit at the instance of the representatives of an apothecary, for payment of a bond for apprentice fee, granted to the defunct by his apprentice,—it was alleged, That the apprentice having been bound for five years, his master died after he had served but three years, a proportion of the fee ought to be retained, as *causa data non secuta*. Answered for the pursuers, That, after three years, in which time the apprentice had sufficiently learned the trade, the want of his future service was only prejudicial to the master. The Lords allowed retention of a proportion, which was modified.—*February* 1683, *Ogilvy against James Hume*.

And in another case, where a master broke, while some years of the apprenticeship were to run, the Lords allowed a proportional abatement.—*James Fairy against Craigdarroch and Lag*.

Page 41, No. 186.

---

1683. *February.* ROBERT HEPBURN *against* SIR JAMES TURNER.

POSTERIOR apprisers of ward-lands, within year and day of the first effectual appriser, (who had taxed the ward, and paid a great composition to the superior,) craving to come *in pari passu* with him after the expiring of his apprising;—it was alleged for the first effectual appriser, That the other co-apprisers behaved not only to pay a share of the expenses of his apprising, but likewise a share of the composition for taxing the ward-lands; seeing the king's charter of apprising contained a clause, that, after expiring of the legal, a new infeftment should be expedite; and the said first appriser, having a separate estate, which might be affected by the marriage-casualty, if the ward should fall, was obliged to get it taxed, which is profitable to the pursuer. Answered for the posterior apprisers, They are content to take their hazard of the casualties of ward and marriage, and, not being in the like circumstances of danger, cannot be obliged to pay any share of the taxing: therefore, the first effectual apprising being expired, the lands must divide, and the obtainer must expedite his own infeftment. The Lords found the posterior apprisers not obliged to bear a proportion of the composition paid for the taxing, but declared, that if, at any time, they should make use of the benefit of the taxing, they should be liable in a share of the composition.

Page 67, No. 288.

---

1683. *February.* GEORGE TELFER *against* WILLIAM PATON.

A DONATOR of escheat having pursued a special declarator against the rebel's

relict,—it was alleged for the defender, 1. It being two years since her husband's decease, possession of moveables is a presumptive title. 2. She had confirmed the goods as executor-creditor, upon her contract of marriage, before the gift; which legal diligence, for an antecedent debt before the horning, must have the same effect against the donator as arresting and poinding; and, the goods being in her own possession, she could not pursue herself. The Lords found the second allegiance relevant; but found, that the rebellion cut off the right of thirds, seeing truly the defunct had no goods; and the right of the third is but a consequential interest, in case the husband have goods; although diligence for positive obligations are allowed, for commerce sake, to prejudge donators.

Page 114, No. 428.

---

1683. *February.*

HUME *against* ARNOT.

ONE Arnot, an appriser of lands for a small sum, being year and day at the horn, and his liferent-escheat gifted;—it was alleged for the rebel's creditors, who had adjudged the right of that apprising posterior to the liferent-escheat, That, as to the rents of the apprised lands lying in the tenant's hands, the rebel could only have so much of the mails and duties as answered to the annual-rents of the sum comprised for, in regard the superplus rents ought to be deduced off the stock, which falls not under liferent-escheat; although, if the rebel had uplifted the whole rents from the tenants, these, as being moveable, would have fallen in the single escheat. The Lords found the allegiance relevant, and that the rebel's creditors had right to the superplus.

Page 114, No. 429.

---

1683. *February.* RUSSEL and TAIT *against* GEORGE CLARK.

ONE being pursued for delivery of some merchant-goods bought by the pursuer,—Alleged for the defender, That he, the same day the goods were sold, sent and told the pursuer, that, upon perusal of his books, he had been mistaken as to the price of the goods, and could not sell them so cheap, and so there ought to be *locus penitentiæ* to him, who instantly resiled before the intervention of writ or delivery of the goods. Answered, *Emptio venditio solo consensu perficitur*, without writ; nor was agreed to, that writ should intervene in this bargain. The Lords repelled the allegiance, in respect of the answer.

Page 255, No. 903.

---

1682, *December*; and 1683, *March.* ALEXANDER TROUP *against* DAVID CRAIGHEAD.

MARGARET and Helen Wishearts, as heirs-portioners served to John Craig-