

the marriage, at the next term after her the granter's decease; which failing, to return to herself, her heirs and assignees: The marriage having dissolved without heirs, and the husband having, as far, pursued the debtor's executors for the money;—Alleged for the defenders, 1. The bond is conditional, failing heirs. 2. Though there were no condition in the case but a substitution, the defenders have [the] only right as heirs substitute to the pursuer, who is far, and liable as an heir. [*Nota*, what follows should be part of the defence.] Answered, The bond being gratuitous, and the pursuer having but a qualified fee, the substitution must be effectual. The Lords found, That the pursuer had but a qualified fee, and decerned him to find caution to restore the money, after her death, to the defenders.

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1688. *February.* CAMERON *against* \_\_\_\_\_.

MR Archibald Cameron having [died] after he had gotten a son, [the son] raised reduction of a 1000 merks' bond, taken by him when he had no children, to his cousin in fee, reserving his own liferent upon the grounds of [the] civil law, *ex supernascentia liberorum*. 2. Mr Archibald, before his death, drew an assignation to the said bond, (conform to a power reserved,) with his own hand, which is *judicium mutatae voluntatis*. 3. *Testamentum imperfectum inter liberos* is sustained. Answered, This part of the civil law hath no place with us. 2. It took only place by the civil law *inter patronum et libertos*. And 3. It was in the case of a total donation, whereas this is but a small part of the defunct's estate. The Lords assoilyied from the reduction. *Vide* No. 146, [David Oswald against Somervell and Boyd, February 1687.]

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1688. *February.* LORD YESTER *against* LORD LAUDERDALE.

MY Lord Yester having adjudged at Christmas 1686, for principal sum and annualrent, due and accumulated at the Martinmas preceding;—the Lords found, That the accumulated annualrent did not bear annualrent from Martinmas, but from the date of the adjudication; and that no annualrent was due for the two months intervening, by virtue of the personal obligation in the bond, which was the ground of the adjudication, seeing the adjudger did not delay till the term, though now the term is past. *Vide* No. 332, [Cleland and Paterson against William Wilson, January 1688.]

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1688. *February.* The EARL of ROXBURGH *against* Mr JAMES CHISHOLM, Minister of LESLIE.

MR John Chisholm, parson of Leslie, having obtained certification, in a reduc-

tion and improbation, against the Earl of Roxburgh, of rights of some lands annexed to the parsonage of Leslie,—the Earl raised reduction of that certification upon this ground, That he was minor; and his tutors and curators had not recovered his writs after his father's sudden death. The Lords, before answer, ordained the Earl to condescend upon the writs he would make use of in the reduction, and debate upon them; and declared, That if he was found to have the preferable right, the Lords would recal or reduce the certification.

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1688. *February.* ABDEN and MR DAVID DEWAR *against* PITTREVVY.

IN a reduction, at the instance of Abden against Pittrevy, of a disposition granted to the defender's father by the pursuer, upon this reason, That the pursuer, a facile youth, had signed it immediately after his majority, as it was sent up to him at London, of design to exclude his succession, by an ill wife he had married, who is now dead without issue,—and the pursuer hath now hopeful children by a virtuous second wife: Again, himself is enormly lesed by the disposition, whereby he hath only reserved a liferent of 3000 merks; and he is willing to allow to the defender all money paid or advanced to or for the pursuer. Answered for the defender, That the pursuer had homologated the disposition, by receiving the annuity of 3000 merks, and granting discharges relative thereto. 2. By a new contract at Dumfermling, the pursuer, who is major, *sciens et prudens*, hath, with advice of his friends, disposed his estate to the defender's father. Replied, By interlocutor of the Lords of Session, the pursuer was allowed to receive the annuity without danger of homologation. 2. The contract at Dumfermling was entered into by the pursuer out of mere necessity, the defender's father having refused to pay him the annuity; and his creditors having forced him to the abbey, therefore the foresaid disposition ought to be reduced upon this material ground of lesion; as was decided 22d February 1688, betwixt Gray of Crichy and the Earl of Lauderdale. The Lords assoilyied from the reduction,—*February* 1688. But this interlocutor was stopped by an after allegiance, that the contract at Dumfermling was entered into upon trust.

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1688. *February.* The PROCURATOR-FISCAL of PEEBLES *against* GEORGE RUTHERFOORD of FAIRINGTON.

FOUND that a wife may, in *liege poustie*, without an onerous cause, dispone to her husband, or his son, *stante matrimonio*, any interest she would have in her husband's goods by her death, and that such a right needed not to be confirmed, though it was *omnium bonorum*, and not intimated, seeing it could not properly be intimated; and the making mention of it in the son's contract of marriage, took off the suspicion of latency. *Vide* No. 473, [Procurator-Fiscal of Peebles against the Laird of Fairingtoun, February 1687.]

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