debauchee, that he or Creichie, as assignee, might pursue exhibition of his mother's contract of marriage, that he might see what was provided to the bairns or heirs of the marriage. For, though the Roman law did reprobate *pactum corvinum de hæreditate viventis* as unlawful, yet, with us, one may sell his apparency of succession even while his father or other predecessor is alive; and, though the father may disown such a flagitious son, so as to exhereditate him, (farther than to aliment him,) and may give it to another, yet the Lords thought this could not hinder him to seek exhibition of the contract.

Vol. I. Page 602.

1694. *February* 6. The COLLEGE of GLASGOW *against* JAMES WILSON and LINDSAY of MAINS.

IN the competition between the College of Glasgow, and Mr James Wilson, minister, and Lindsay of Mains, about the vacant stipend, the Lords found the Bishop's presenting, as patron, made it a patronate, but not a patrimonial mensal kirk, to fall under the exception of the Act of Parliament 1685, anent the disposal of vacant stipends to the Universities: but found the vacancy occasioned by the rabble's thrusting out ministers was *casus incogitatus*, and not foreseen or meant by the said Act of Parliament; and therefore that such vacancies did not belong to the College of Glasgow; and that Mr Wilson, proving he served at that kirk after the 13th of April 1689, (which was the date of the proclamation of the meeting of Estates,) he had right to that half year's stipend.

Vol. I. Page 603.

1694. *February* 7. STEWART *against* GORDON.

ARBRUCHEL reported the case of Stewart against Gordon, for repaying fourteen dollars he had given him in 1683, (when prisoner in the Canongate tolbooth for conventicles, and banished to Jamaica,) to help him to escape, Gordon being then one of the jailer's servants; and that, though he was once down the tolbooth stairs, yet, by his contrivance, he was retaken, and sent to America, and now returned. The libel being referred to Gordon's oath, he deponed that he got the money, but gave it to Birrel, the turnkey, and disposed of none of it; that the pursuer was indeed seized on ere he had made his full escape, but not by his means or discovery, any manner of way. The bailies had found him liable on this oath; which decreet he suspended.

Some of the Lords were for finding the letters orderly proceeded, not so much on his oath, that it was an extrinsic quality that he gave away the money, and that it came not to his use, as that it was an unlawful action to take a bribe to let a prisoner escape. But the plurality found, where there was turpitude *ex parte utriusque, potior est conditio possidentis;* that the libel being only proven by his oath, you cannot divide the same, but take it complexly as it stands:

and, therefore, they assoilyied Gordon. Some were for examining Birrel, to see what he did with the money; but it was represented that he was dead.

Vol. I. Page 603.

1694. *February* 7. PATRICK BELL, Merchant in Glasgow, *against* WILLIAM COLQUHON of CRAIGTON.

THE Lords found the king's commission to the Earl of Loudon, to sell the annuities, was not restrictive, that they should be only sold to heritors and life-renters, but even to them who had no interest in the land, bearing the words *et aliis;* and that thir annuities are not discharged by the Act of Grace in 1673, seeing they were disponed before it; and that the king could remit none but these which were undisposed on: and found none could be liable for them but only the heritors and possessors for the respective years in which they were acclaimed, they not being *debita fundi,* but only *fructuum:* but in regard there was yet 600 merks of the price in the buyer's hand, allowed the disponer to be cited *incidenter* in this process, to answer why a part of the said price should not be made forthcoming for the annuities of these years wherein the disponer possessed, after deduction of purging incumbrances, and other real burdens affecting the land. *Vol. I. Page* 603.

1694. *February* 7. MR WILLIAM IRVING *against* JOHN IRVING of DRUMCOLTRAN, his Father.

THE Lords found it no sufficient probation of majority, that, at the time of his subscribing the discharge to his father, he was laureat, and passed the college, and had been at a writer's chamber; and, therefore, allowed him to prove his minority, he always instructing that he had revoked, or intented a reduction of it, *intra annos utiles:* and found it was not so *in rem versum* as to hinder his reduction, that the sum in the discharge was for his apprentice-fee; because it is a *debitum naturale* on a parent to educate their children; and lawyers think the *impensæ* bestowed that way *nec veniunt in computationem legitimæ nec in collationem bonorum.* As to the 500 merks which the father left to the determination of friends, the Lords ordained them to be charged with horning, to meet and give their opinion.

And, *quoad* the last article of his share of his sister's portion of 2000 merks, it was argued, that the term of payment being her marriage, and she dying unmarried, it was a conditional bond, which never took effect, but evanished; so that the marriage was not merely the term of payment, but the term of existence of the obligation.

ANSWERED,—There was a substitution in the bond of provision; for, though it was not payable to her till after her marriage, yet it bore, that, failing of her, it should fall to her brother, where the clause of her marriage is not repeated; and, in pupillar substitutions, the substitute took place though the institute did not.

The Lords thought the clause dubious; but, in regard the father was alive,