

ported ; and, though he was only holden as confessed both on the debt and the promise of payment of annualrent, yet the Lords would not now repon him to his oath, after so long an interval as fourteen years ; and, because he being *lappus bonis*, little regard was to be had to his oath. *Vol. I. Page 633.*

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1694. *July 17.* LADY LAURISTON *against* ALEXANDER ARBUTHNOT of KNOX.

HE had obtained a decret of improbation of a bond taken betwixt the contract and the marriage. They now raise a reduction of that decret, and crave production of Knox's active title. ANSWERED,—You have no interest to call for it, nor am I obliged to produce to you ; your title being declared false and improven. REPLIED,—This were to bar all reductions of decreets of improbation.

The Lords found they could not question his title till first they reduced the certification in the improbation, or got themselves reponed against the same.

*Vol. I. Page 633.*

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1694. *July 19.* HELEN HOGG *against* The MAGISTRATES of KIRKALDY.

THE debate arose upon the conception of a bond, whereby a father lends out a sum of money, not payable to himself, but to his wife, and, failing of her by decease, to his daughter Lillias Masterton, in fee, with power to the mother to uplift. The point was, If the mother was *fiar*, and the daughter only substitute ; or, if the mother was only *liferenter*, and the daughter *fiar*. For this last opinion there were cited the following decisions :—*Durie, 22d February 1623, Leitch ; 28th July 1626, Tullyallen ; 20th February 1629, Drumkilbo ; and Stair, 23d July 1675, Lamington.* For the daughter it was urged, That the money was hers, and not the mother's ; and that the father's design was, to give it in a provision and tocher to his daughter ; and the last termination of heirs was on the daughter's heirs.

Yet the Lords found the mother was *fiar* in this case, and the daughter only substitute ; and preferred the mother's assignee.

*Vol. I. Page 634.*

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1694. *July 19.* SUSANNA STEWART *against* JAMES SINCLAIR.

IN the case of Susanna Stewart against James Sinclair, clerk to the loosing of arrestments, for paying her debt of 500 merks, owing by Hay of Park, for loosing the arrestment laid on by her upon his emoluments as one of the five commissioners of the register's office, without caution or consignment, but only upon his own bond ; whereas it being on a decret, it was not looseable : and seeing it was found, by a posterior interlocutor of the Lords, that these daily obventions and casualties were arrestable, and not precisely of the nature of an