of October, to last betwixt and the 15th of November thereafter; and the decreet-arbitral is pronounced on the said 15th day, which is without the limits of the submission, and so null: for though, in other cases, a day prefixed in favours of one of the parties, includes the day, so that, till it elapse, there is room for performance; but it is not so in submissions, which run *de momento in momentum.* But, this not being fully debated, it was not decided at this time. It was suggested, That the parties compeared before the arbiters on the said 15th day, and gave in their claims; which was a plain acknowledgment and homologation of the prorogation. But this being only faintly alleged, it was not regarded; unless it had been proponed *peremptorie,* and offered to be proven.

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1710. *July* 11. GILBERT GRIERSON of CHAPPELL *against* JOHN NEILSON, Writer, Dumfries.

GILBERT Grierson of Chappell having contracted many debts near to the value of his estate; and adjudications being led for the same, and purchased in by John Neilson, writer in Dumfries; upon a stated account betwixt them, Gilbert grants an absolute irredeemable disposition of his lands to Neilson; but, afterwards, he grudging that there was nothing given to himself, there is a second transaction, by which Gilbert and his wife of new ratify the former disposition, and Neilson gives him a liferent-bond of pension, for paying him yearly £20 sterling during his lifetime. Gilbert, being advised by some that he was overreached in this bargain, raises a reduction and improbation both of the disposition and ratification, on the grounds of law after-mentioned. And because such processes came not quickly to be terminated; therefore he raises a summons of aliment against the said John Neilson, for modifying a sum to him in the interim, till he could bring his reduction to a conclusion; and insists, on this ground, that, by the Act of Sederunt 1690, no aliments are to be granted to debtors, but when there is a probable view of a superplus estate, more than will pay all the debts; and Gilbert subsumes, in thir terms, that Neilson, a man very cautious and circumspect, would never have granted a bond for £20 sterling *per annum,* had he not seen a plain visible fund out of which he could pay it. Next, reductions being, by their astrictions to many forms of process, very tedious, he craves only an interim aliment, till his reasons of reduction be determined, which are both relevant and pregnant in themselves, *viz.* 1*mo,* The dispositions were in trust, he being his agent, writer, and sole doer. 2*do,* They were not for an onerous cause, as is evident from his granting the £20 sterling bond. 3*tio,* He stands interdicted, as being a simple facile man, imposed upon by every body.

ANSWERED,—There was never a more groundless process of aliment raised before the Lords than this, and he might as well crave it from any of his creditors as from Neilson the defender; for if this practice were once allowed, then a bankrupt heritor had no more to do, after he has sold his lands, but to raise a reduction, and crave an aliment in the meantime, though he knows he can never prevail. And the bond of aliment can never prove there is a superplus to come in after all the creditors are paid; for it bears expressly to be granted for love

and favour, and out of mere pity and commiseration. And, seeing he founds upon it, he clearly homologates and acknowledges the disposition: and his pretence, that he only mentions it to demonstrate he had not paid an adequate price before, is captious and impertinent; for, if he repudiate the same, he can found no argument on it.

As to his reasons of reduction, ANSWERED to the *first*, anent the trust,—That there can be nothing more false and calumnious; for now, by the Act of Parliament 1696, no trust can be proven but *scripto vel juramento*; and let him choose any of the two he pleases. And, as to the *second*, against the onerous adequate cause; he oppones both the disposition and ratification, wherein he has acknowledged the same; and what can law require more than that? As for the pretended interdiction, it is published *in anno* 1675, and Ferguson of Craigdarroch, who lived last of all the interdictors, died in 1685, now twenty-five years ago; so to trump up an interdiction, after it has been so long dead and buried, is a downright mockery.

The Lords found no ground for modifying any aliment in this case; but prejudice to Gilbert to insist for his liferent-bond of pension, as accords.

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1710. *July* 11. ——————— *against* CARNEGIE.

A QUERY was made to the Lords on this ground:—In a process against Carnegie of Finhaven's eldest son, a point was referred to his oath. It was suggested, that, by a palsy, he had been these many years bygone struck dumb; but it had affected neither his judgment nor hearing, so as he wrote his mind on any subject most judiciously; and though he was deprived of the use of his tongue, whether he might not be allowed, after he was sworn, to set down his oath in writing. And the Lords found, in this extraordinary case, he might; and that it fell not under the Act of Sederunt, discharging the giving of oaths in writ.

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1710. *July* 12. HELEN HUNTER and PATRICK JOHNSTON *against* SIR THOMAS MONCRIEFF of that ilk.

HUNTER and Johnston against Sir Thomas Moncrieff. By contract of marriage in 1661, betwixt the said Sir Thomas and Bethia Hamilton, she is provided to the liferent of 28,000 merks of principal sum, and, in case of no children, to the half of the conquest; and thir provisions are declared to be but prejudice to her of the half of the moveables. She being the first deceaser, without any children, Helen Hunter, her niece, and nearest of kin, confirms herself executor to her, and, with concourse of Patrick Johnston, her husband, pursues Sir Thomas Moncrieff of that ilk, for the half of the moveables, debts, and sums of money he had at the time of his first lady's death, extending to a great sum, as falling under her aunt's communion of goods, by the reservation in her contract