No 1. objection; which letters, because they were given without cognition in the cause, were not sufficient to warrant the inquest simply, but from wilful error.

In the action of reduction foresaid it was libelled, That the inquest had erred in it, because the said Alexander Maxton showed to the said inquest the time of the serving of the brieves foresaid, an instrument of resignation, wherein was contained, that umquhile John Maxton, and Elizabeth Tod his spouse, father and mother to the said umquhile Mr Patrick, and to the pursuer and to the defender, resigned the said tenement in the Bailies' hands of Perth, in favour of the said Mr Patrick; and failing of him, to the said Alexander, his brother; and therefore the said inquest serving the said John Maxton, elder brother, as heir to the said umquhile Mr Patrick, knowing that diverse others had title to the said lands and tenement, bought their titles; and judging their titles to be good, caused them resign their rights, and thereon took new sasines, wherein there was no tailzie, and therefore the said Mr Patrick broke the first tailzie. It was *replied*, That the said tenement being once resigned in favour of the said Mr Patrick, and he, by virtue thereof, being seased thereintil, was *dominus tenementi, et quod semel meum, amplius meum non potest fieri, quia non sicut pluribus modis rem possidere possumus, ita ex pluribus causis res potest nostra fieri, L* 3. *D. De adquirenda vel amittenda possessione.* It was *answered*, That seeing it was uncertain with which of the titles the said Mr Peter bruiked the said tenement, it was to be presumed, that taking a new sasine by virtue of a new title, he disceded from the first, and took him to the last; and the last being without any tailzie, the tailzie was broken by the new sasine. The Lords found by interlocutor, That the inquest did wrong, and absolved them from that reason, and found that by new sasines the first tailzie was broken.

*Fol. Dic. v.* 2. *p.* 134. *Maitland, MS. p.* 217.

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No 2. 1586. Seaton *against* Seaton.

A donation *mortis causa* cannot be taken away by the subsequent escheat of the granter.

*Fol. Dic. v.* 2 *p.* 115.

*** Lord Kames in his Dictionary refers to this case as being in Colvil; but no such case has been found in that MS. See Appendix.

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No 3. 1607. *February* 4. Marjoribanks *against* Mellerstains.

In the removing pursued by Joseph Marjoribanks against the Lady Mellerstains, she *excepted*, That she had infeftment in conjunct-fee of the said lands given to her by her husband *in anno* 1587. It was *answered*, It was null, be-

cause he was then minor, and had curators who had not consented to it; as likewise, that it was done inter virum et uxorem, stante matrimonio, quæ de jure prohibita et nulla est. It was *answered*, That that nullity received an exception, si morte confirmetur. It was *duplied*, Non potest morte confirmari, si revocetur ante mortem, which was done in this case; because the Laird of Mellerstains in his own lifetime, and long after the Lady's infeftment, had given infeftment of the same lands to William Napier the pursuer's author; which the LORDS found not to be of the nature and effect of a revocation of the Lady's foresaid infeftment. No 3.

*Fol. Dic. v. 2. p. 133. Haddington, MS. No 1286.*

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1626. *March* 8. TRAQUAIR *against* BLUSHIELS.

No 4.

A SPECIAL donation *mortis causa* not found revoked by a testament, mentioning goods and gear in general, which was interpreted to be only such as were not disponed.

*Fol. Dic. v. 2. p. 133. Durie.*

*** This case is No 2. p. 3591.

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1631. *July* 12. L. HUTTONHAL *against* CRANSTOUN.

No 5.
Posterior comprising creditors found to have no power to challenge or revoke a donation by a debtor to his wife.
See No 12. p. 11348.

THE Laird of Huttonhal having assigned the right of the tack of the teinds of Huttonhal, whereof he was tacksman, to his wife *in anno* 1618; after his decease she pursues for exhibition and delivery thereof to her. After exhibition, William Cranstoun, who had comprised both the lands and teinds from the husband, for debt owing by him, *alleged*, The right of the tack thereby pertains to him, and not to the lady assignee; for that assignation was but *donatio inter virum et uxorem, stante matrimonio*, done for love and favour, and was revocable: Likeas, at the very day of the assignation, she granted a back-bond to her husband, whereby she obliges herself to quit that right, whensoever her husband should require her, to him, his heirs or assignees, and the right of the back-bond; and the power which the husband had thereby to require her to quit her right, and also the husband's power which he had to revoke, he alleged, by the comprising from the husband of his right, was now competent to the compriser, and devolved in his person, sicklike as if he had been made second assignee by the husband to this tack; in which case, that first assignation made to the wife had been revoked, and now the like must be in respect of the comprising, which is a judicial assignation; and the Lady *answering*, That that comprising cannot be respected as a revocation, neither has the compriser