

1695. *June 29.* CRAWFORD *against* VALLANCE'S HEIRS.

No. 244.

A mutual contract becomes an effectual deed upon the subscription of the parties, and requires not delivery to complete it.

Durie.

* * * This case is No. 62. p. 12304. *voce* PROOF.

* * * The like found 23d June 1626, Maxwell *against* Ld. Drumlanrig, No. 63. p. 12304. IBIDEM.

1626. *December 16.* BYRES *against* JOHNSTON.

No. 245.

An obligation to dispone lands, being put into a writer's hand, in order to form a charter thereupon, found, That the purchaser could not have exhibition of the bond, or oblige the seller to implement, unless he could subsume, that the bond was given to the writer for his, the purchaser's behoof, in order to be delivered up to him.

Durie. Kerse.

* * * This case is No. 15. p. 8405. *voce* LOCUS PœNITENTIÆ.

1627. *December 14.* DICKSON. *against* DICKSON.

No. 246.
Deed in fa-
vour of a wife.

In an action for delivery of a house, pursued by Dickson, heir to the heritor thereof, *against* Dickson his relict, who defending herself with a charter made to her of the house libelled during her lifetime by her husband; the Lords sustained that exception upon the charter *against* the heir who was pursuer, albeit no sasine had followed thereon in the maker's lifetime. And it being further replied by the pursuer, that that charter could not furnish any defence to the relict, because it remained ever in the defunct's hands and keeping, so long as he lived, and was never delivered to her, nor became her evident in her husband's lifetime, but being amongst the defunct's other writs the time of his decease, was after his decease found amongst the defunct's writs then intromitted with by her; which reply the Lords found relevant to be proved by the defender's oath, albeit she alleged, that the reply was not relevant, and that she ought not to be compelled to give her oath, how that writ came in her hands, seeing the same being now in her hands, and being an evident made in her favours, it was sufficient to her, either to produce action thereon *against* the heir of the maker, or to defend her *against* the heir's pursuit, seeing the same was never revoked by her husband,

and that he had done no deed before his decease to derogate thereto ; which duply was repelled, and the said reply was found relevant. No. 246.

Act. *Craig.*Alt. *Hope & Belcher.*Clerk, *Gibson.**Durie, p. 322.*

1628. *March 5.* M'GILL *against* EDMONSTON.

In an action for delivery of a bond between M'Gill and Edmonston, the pursuer having a bond made to him upon some monies by a principal debtor, and some cautioners therein mentioned, which being subscribed by the principal party, and by some of the cautioners, and so delivered to the pursuer in his hands ; thereafter he delivers the same to the defender, to be subscribed by him, his name being inserted therein as one of the cautioners nominated in the bond, and which was subscribed by the said defender, and retained still in his hands ; and therefore the pursuer pursues for exhibition and delivery of the same to him, as his own evident ; and the defender alleging, that seeing the bond came never in the pursuer's hands since his subscription thereof, he might lawfully cancel and take his own name therefrom ;—the Lords found this relevant, and that the defender could not be compelled to exhibit the bond subscribed by him, but that it was lawful to him at any time, before the bond came in the pursuer's hands, since his subscribing thereof, to repent, and so cancel his subscription ; but found, that he ought to exhibit and deliver the same to the pursuer, in that same state as it was when he received it, so far as concerned the other parties subscribers thereof.

Clerk, *Scot.**Durie, p. 355.*

1629. *January 19.* DAWSON *against* BANNATYNE, &c.

In an action between Elizabeth Dawson, daughter to Margaret Brown, La. Humble, and Dame Elizabeth Bannatyne, La. Humble and Comston, the Lords found it was not necessary to allege that the reversion became Humble's evident after so long a time, but that the presumption militates in the contrary.

Kerse MS. f. 70.

1629. *July 13.* LUNDIE *against* DALRYMPLE.

Writs and evidents being impignorated for 300 merks, and the haver thereof is pursued therefore by one that had bought the land, the defender gave in a qualified oath, that the said writs were impignorated ; which the Lords found relevant.

Auchinleck MS. p. 258.

No. 247.

Monolateral
deeds *inter*
vivos not
effectual
without de-
livery.

No. 248.

No. 249.