

reserved to himself in the disposition he had made, and therefore willed the said sum should affect the lands, and burden his son, conform to the said disposition : and as the said John, if he had not been forfaulted, would never have been able to evade this debt, so neither can the King or his donatar, it being *onus reale inhærens* before the forfaulture, and therefore it must pass *cum onere*. And as to the *facultas* reserved by the father, it is real, and might have been comprised from him at a creditor's instance.

ANSWERED,—That however the laird of Swinton might have been reached upon the said debt, yet my Lord, who is donatar to the forfaulture, and so a singular successor, can never be, unless infeftment had followed upon that bond of Smeton's, and it had become a real right.

They were to have the Lords' answer upon this.

*Advocates' MS. No. 203, folio 102.*

1671. *July 12.*—THE case at No. 203, *supra*, being reported, the Lords found that in the disposition made by Sir Alexander Swinton to his son John, he reserved a faculty for burdening the estate by wadsets, or other infeftments, with the sum of 52,000 merks ; and that this declaration, in a personal creditor's bond, That he willed this sum should be a part of the said sum reserved him, was not *habilis modus* of exercising his said power ; and therefore assoilyied the King and the Earl of Lauderdale his donatar therefrom, as noways affecting them.

*Advocates' MS. No. 217, folio 104.*

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1671. *July 12.* Consent by a WOMAN clad with a HUSBAND.

THIS case being taken to interlocutor, Whether or no a woman clad with a husband the time of the consent, may not reduce a consent, given by her then, to an alienation of her conjunct-fee lands, upon thir common grounds of law, That what she did was through marital reverence *et ex timore*, and that her subscription was *fide implicita*, in so far as they assured her and made her believe that what she was doing redounded noways to her prejudice. This the Lords declared they would hear both parties debate upon in their hail presence, out of the common law, in regard there was nothing yet in our law to be a rule therefore.

*Advocates' MS. No. 218, folio 104.*

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1671. *July 14.* Anent EXHIBITION ad deliberandum.

THE Lords found an exhibition *ad deliberandum*, sought by an apparent heir, ought to be sustained only for all writs granted to the apparent heir's predecessor, by whatsoever person ; as also for all writs granted by him containing clauses of reversions or other clauses conceived in his favours ; and siclike for all writs