

1677. *July 12.* JEAN DOLBY and PATRICK LAUDER *against* WILLIAM HOG.

IN the case of Patrick Lauder and Jean Doby, his spouse, and William Hog, her son, the Lords found, where a party had given a bond obliging himself to submit, it was equivalent to a submission; as an obligation to discharge, if it be simple, is a discharge upon the matter; only, in regard the year was expired, (and indefinite or blank submissions in construction of law stand only for a year,) after the date of the bond, and the woman submitter was now, *medio tempore*, clad with a husband, and one of the parties arbiters was dead, (in whom, *eligitur industria personæ*,) they found the bond to submit could not bind, because it could not now take effect.

The said Hog having also raised reductions of the said Jean her decret of adjudication, proceeding on the provision and clause of conquest in her contract matrimonial; see seven or eight reasons of reduction in the information beside me, with answers thereto. I shall only mention one, viz. that the decret was null and without probation, because it did not prove the time of her husband's decease.

REPLIED.—Though [she] might be admitted *hoc loco* to prove it yet, to fortify her decret, (see Stair's Decisions, *November 29, 1662, Somervell and Newton* :) yet she needed not, because having libelled a definite time, viz. the month and year when he died, and there being compearance, and that time not denied, [she] was not obliged to prove any more than what they put [her] to prove, and, consequently, was liberated from that. Which was found relevant.

Upon another reason in this reduction, viz. a woman being provided to the liferent of a sum for her jointure, and likewise to the liferent of the conquest, if the most of what her husband leaves was conquest, and she crave the liferent of that *primo loco*, and would cast over the other provision to be supplied by the heir out of the stock and fee: The Lords find this calculation ought not to be suffered; but, *primo loco*, the liferent of that sum must be made up to her, and then she may claim the liferent of the remanent as conquest; for conquest is only *deducto ære alieno*; now the former provision is a debt, and so to be defaulted.

See M'Keinzie's Observes on the Act of Parliament 1621, p. 74.

*Advocates' MS. No. 603, folio 293.*

1677. *July 12.* JAMES SOMERVELL *against* WATSONE of Damhead's CREDITORS.

JAMES SOMERVELL, usher to the Exchequer, gave in a bill to the Lords thereof, shewing that he was donatar to Watsone of Damhead's escheat, and sundry creditors had pointed the escheat goods, and therefore craved their warrant to force redelivery. This, as illegal and arbitrary, was denied, he not so much as having declared his gift generally, and their pointing being *authore prætoris*.

I remember, in *November, 1676*, in the case of *Grant and Grant*, one who was convened as vitious intromitter was assoilyied, because he was donatar to the defunct's escheat, though the gift was posterior to his intromission, and was never de-