

clared. Which seems not to want its scruple. This I read in the President's collection of decisions. *Advocates' MS. No. 604, folio 293.*

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1677. *July.*

THE Lords made an act discharging the clerks to give up the principal minutes to the parties, or their advocates ; because thereby the extracting of acts is oftentimes much retarded. *Advocates' MS. No. 605, folio 293.*

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1677. *July 17.*

THE Lords were this day upon an act of Sederunt, that the clerks to the bills should be liable for the responsality of the cautioners received, and that *in subsidium*. See this debate in another paper-book.

*2do*, That bills of suspension within eight days after presenting, if they be not past, or an act in them, the charger shall, *ipso facto*, have liberty to proceed in his diligence without any more.

See my summary of the Sederunt-books.

*Advocates' MS. No. 606, folio 293.*

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1677. *July 17.* M'KEINZIE of Suddy *against* ROSSE of Kilraick.

A WIFE called Margaret Andersone, being liferentrix of lands, does, with consent of her husband, assign and dispoise her liferent right in favours of another person ; he transfers it to a third, and a third to a fourth. This fourth grants a backbond to the husband, declaring, that for onerous causes, the right of the liferent is the husband's.

This was quarrelled, as *donatio inter virum et uxorem*, in construction and interpretation of law, though done *per interpositam personam*, and so, as revocable *tacite vel expresse*, since *quod non licet directo, nec per obliquos licebit cuniculos*.

ANSWERED,—It had gone through many hands, and past to singular successors. *2do*, Its returning to the husband made it not a *donatio* ; because *ab initio*, (which is ever to be attended,) it was not a donation flowing from the wife to the husband, *stante matrimonio*, but was come in his person, for some new onerous cause.

The Lords found the conveyance was to be presumed to have been merely done *animo fraudandi legem* ; and wherever appears a design *fraudem legi facere, ejusque mentem circumvenire*, there it annuls the deed ; and found it was *vitium reale* that followed and affected it *per mille manus* ; and so declared it to be a donation and revocable.

They had decided the same thing formerly in *Wolmet's case*, in 1663. See *Alex-*

ander Arbuthnet's information contra Colonel Hary Barclay; see Lutfuit and Corser's information. *Vide supra*, June 26, 1678, [*Birnies against Morray*,] No. 580. See Schotani *Examen Juridicum*, ad *Tit. de Donationibus inter virum et uxorem*. See the same decided in Dury, December 21, 1638, *Craigmillar contra Chalmers*. See Craig, pag. 97 and 341. *Advocates' MS. No. 607, folio 293.*

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1677. July 21. SIR ROBERT PRESTON'S RELICT *against* HIS ELDEST SON.

IN a cause of Bothwell, relict of Sir Robert Preston, against Sir Robert's eldest son: Forret inclined that though a bond of provision by a father to his children, was not a delivered evident in the father's lifetime; yet he being tutor and administrator of law to his own bairns, might keep their writs, and that could not hinder execution on them after his decease, though they bore no clause dispensing with the not delivery, and that these bairns were provided to 10,000 merks already, by their mother's contract of marriage, and this was an additional provision of 10,000 merks more.

See Dury, 11th November 1624, *Wallace of Ellersly*.

*Advocates' MS. No. 611, folio 294*

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1677. July 21. BRUCE of Bordy *against* KEIRIE, and CALLANDER.

BRUCE of Bordy pursues one Keirie, chamberlain to the Earl of Mar, and one Callander, for a spulyie and ejection: ALLEGING, that they entered to the land *privata auctoritate*, and not *via juris*; *et non est singulis concedendum quod per prætorem seu magistratum expediri debeat*, L. 176, *D. de Regulis Juris*.

ANSWERED, Bordy sold them the seed, *et omnia sua instrumenta rustica agriculture*: *quorsum hoc et cui bono*, if it was not an allowance to possess the land, which he could not do himself, being then in prison? and this being *presumptio juris*, must be sufficient to liberate them, since *causa quævis, etiam fatua*, is good enough to purge a spulyie, &c.—*Infra*, No. 642, [Historical volume, *Young against Hope* 3d October, 1677.]

*Advocates' MS. No. 612, folio 294.*

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1677. July 21. COLONEL HENRY BARCLAY *against* ALEXANDER ARBUTHNOT of KNOX.

ALEXANDER ARBUTHNOT of Knox, being charged upon a bond granted by him to Colonel Hary Barclay, to make the evidents of the lands of Knox forthcoming, when he should necessarily have to do therewith; suspended on this reason, that the colonel sought them merely out of malice to vex the suspender, and it may be to destroy the writs; and they could not condescend on any rational