

*vivos*, of all free goods he should have, the time of his decease, implied the burden of his debts; and that the clause, *the time of his decease*, did not make it *donatio mortis causa*.

Page 31, No. 146.

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1687. *February*. The LAIRD of DUNDAS and CRAMOND *against* GEORGE DUNDAS.

THE Lords ordained a wadsetter to assign his wadset to a purchaser of the land and reversion, seeing he could condescend on a prejudice he was to sustain thereby.

Page 59, No. 249.

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1687. *February*. CHARLES CHARTERS *against* ANDREW BARRY.

FOUND that a third appriser, within year and day of the second, and not of the first effectual apprising, could not come *in pari passu* with them.

Page 79, No. 324.

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1687. *February*. GEORGE GELLAN *against* DAVID CORSAR.

A MAN having assigned to his father, by way of aliment, the sum in a bond formerly taken by him to his wife, in liferent, *stante matrimonio*, with whom he had made no contract;—in a competition, after his decease, betwixt his relict and father, it was alleged for the relict, That provisions, *stante matrimonio*, to wives having no contract, are not revokable as donations, marriage being an onerous cause. Answered, The husband is fiar in the bond, and might alter; 2. The bond doth not relate to the marriage, and wives have the legal provision of third and terce; and here the husband hath settled on his wife a large provision above what could have fallen to her by law; and, *in quantum* the liferent of the bond exceeds the legal provision, it is *donatio*. The Lords preferred the father during his life.

Page 99, No. 385.

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1687. *February*. MURRAYS *against* MILLER.

A PERSON having poinded upon a decret obtained before a baron court, the defender pursued a spuilie before the sheriff of Lanark, who found the decret of the baron court null, and decerned in the spuilie; which decret of spuilie being suspended, the Lords found the sheriff, who is an inferior judge, could not

cognosce the decret of another court ; and therefore turned the decret of spuilye into a libel.

Page 110, No. 410.

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1687. *February.* The PROCURATOR-FISCAL of PEEBLES *against* FAIRINGTON.

A WIFE's discharge, *in lecto*, of all right she had in her husband's goods, does not hinder confirmation at her death, more than assignation *in lecto* doth hinder confirmation of the subject assigned. And it was debated, That, though a wife hath no creditors to confirm it, or her nearest of kin neglect to do it, the procurator-fiscal may confirm for securing her part of the goods ; 2. That the wife's disposition of her share of the goods in communion to her husband, in *liege poustie*, stops confirmation ; and she hath not *retentam possessionem* to infer simulation, as when a husband assigns to his wife. *Vide* No. 474, [Procurator-Fiscal of Peebles *against* George Rutherford of Fairington, February, 1688.]

Page 129, No. 473.

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1687. *February.* DUNCAN CAMPBELL *against* STROWAN ROBERTSON.

A RIGHT found conveyed by an intimated assignation, and not to be *in bonis* of the deceased cedent, but in the person of the assignee, as formal creditor, though it appeared, by the assignee's oath, that the assignation was granted for the cedent's behoof.

Page 129, No. 472.

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1687. *February.* JOHN CALLENDER *against* CREDITORS of CRAIGFORTH.

FOUND that a base infeftment was clothed with possession only by a summons of poinding the ground, raised and called *declaratorie ante terminum*, or by a decret obtained, after the infeftment, for a term's annualrent prior to the infeftment. *Vide* No. 606, [Forrest *against* John Callender, January, 1687.]

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1687. *February.* ROBERT CRAWFURD *against* The MAGISTRATES of AYR.

THE magistrates of Ayr having, by an act of council, commissioned an agent to manage their affairs, he pursued the succeeding magistrates for payment of his accounts. Alleged for the defenders, That the pursuer's accounts ought not to be sustained, being for managing a factious process at the employer's in-