

made his daughters' portions depend on the subsequent heir's consent. 3. The particular exception must derogate from the destination as well as other things; it not being usual that matches could be had, where tochers are under so strict destinations; besides, the daughter was in fee, and might dispose for such an onerous cause as marriage. The Lords found, that the contract ought not to alter the father's destination, failing bairns of his daughter's body; and the defenders craved the pursuers might find caution in that event.

*Page 52, No. 224.*

---

1688. *July 14.* MRS EFFIE SCOT *against* DANIEL NICOLSON.

Mrs Effie Scot having transacted a debt contained in her father's bond, on which she was pursued as representing him, and thereafter discovered that the said bond was found among her father's papers after his death, blank in the creditor's name, she raised a declarator of extinction of the bond and transaction; seeing, by the civil law, transactions may be rescinded *super instrumentis falsis*. Answered, Though the bond had been taken out among the defunct's papers, that could not prejudice the defender, a creditor who had it for an onerous cause, and was not *doli particeps*; and transactions are the greatest security of the lieges. The Lords demurred to rescind the transaction; but, before answer, allowed probation as to the point of fact of taking out the blank bond, in order to relief against the uncle Mr James Scot, who was alleged to have taken out the same.

*Page 53, No. 225.*

---

1688. *July 18.* LORD PANMURE *against* The VASSALS of ABERBROTHOCK.

IN a poiding of the ground for feu-duties, at the instance of the Earl of Panmure, as lord of erection, against the Vassals of Aberbrothock;—Alleged for the defenders, That this manner of execution is only competent to superiors; and, by the Act 10, Parl. 33, the superiorities of church-lands are annexed to the crown, and the feu-duties only are reserved to the lords of erection, till redeemed by the king; and the execution by horning and poiding, appointed in that Act, is not real execution *contra fundum*. Answered, As the feu-duties remain with the lords of erection as formerly, so the same execution is competent for these as before. 2. An assignee to feu-duties may poid the ground in his cedent's name; *multo magis* may the lords of erection, who are assignees by reservation, poid for theirs.

*Page 213, No. 755.*

---

1688. *July 20.* The LADY HARDEN *against* CRAIGENTINNY.

SIR John Nisbet having, *in anno* 1686, disponed, to young Craigentenny, all

debts, sums of money, due by bond, contract, or infertment, or otherwise, to him, or which should belong to him, the time of his decease, any manner of way; the Lady Harden, Sir John's daughter, confirmed, as executrix *qua* nearest of kin, a matter of £500 of lying money. It was alleged for Craigentenny, That the lying money fell under the disposition to him, as being sums due not upon bond, &c.; and the defunct had declared, in the said disposition, that he had sufficiently provided his daughter, whereby it appeared that he intended no more for her. Answered, That the defunct could not be understood to have disposed of all his moveables, seeing goods and gear are not mentioned; and lying money is considered as a *corpus*, and cannot be said to be due; but *nomina debitorum* come under the terms of sums due. 2. In a deed, *in anno* 1682, where the defunct had disposed all to his daughter, he mentioned lying money *per expresum*; which deed, though it be now altered, demonstrates that, in Sir John's opinion, lying money did not fall under the general sums of money. 3. In a disposition, *anno* 1687, by Sir John to Craigentenny, the granter having repeated the clause in the disposition 1686, he subjoins, after sums of money, these words, *viz. principal, annualrents, and penalty*; which certainly respects *nomina debitorum*. The Lords decerned in favours of the executor.

Thereafter, the Lords found also, That rents, consisting of farms, or money not paid to my Lord Dirleton, or the Lord Chamberlain, before his decease, fell to Craigentenny, as coming under the denomination of debts; but, that the victual paid in was to be esteemed under goods and gear, (which was not disposed,) and so fell to the executor. *Vide* No. 673, [Craigentenny against Lord Dirleton's Daughter.]

Page 34, No. 155.

---

1688. July 20. ROBERT PRINGLE *against* his SISTER ELIZABETH and RUTHERFOORD her HUSBAND.

A FATHER having granted an 8000 merks' bond of provision [to his daughter,] with a quality, that, if she married without consent of her mother and brother, it should be restricted to 6000, and the other 2000 should accresce to the brother; and [she] having pursued the brother for the whole 8000 merks,—he alleged, That she had fallen from 2000 thereof, by marrying without his consent. Answered, 1. The clause of restriction was not known to the pursuer. 2. The mother hath consented, and the defender cannot give a rational exception against the match. Replied, Such clauses are adjected by parents to secure their children from being a prey to unequal persons; and this is not a depriving her of all provision, but only a restriction. 2. The mother's consent was impetrated *ex post facto*, and the husband hath no visible estate. The Lords sustained the answer, and decerned for the whole. Here the husband had an employment.

Page 54, No. 227.

---