

The Lords found not only the testament null, as being blank, and filled up after her death, but false, and without warrant; and deposed both the notaries, and gave warrant to the Sheriff of the shire to send both their persons to Edinburgh, to be set upon the cock-stool, with a paper upon their brows.

No. 8.

*Stair, v. 2. p. 804.*

1688. *February.*

The CHILDREN of WALTER YOUNG *against* HENRY ANDERSON.

No. 9.

An assignation of moveables, annual-rents, made by one *in articulo mortis*, found null, in respect it was proved by the witnesses inserted, that the assignation was not read to the cedent before he signed it.

*Harcarse, No. 123. p. 24.*

1694. *December 4.* LADY ARBUTHNOT *against* SIR THOMAS BURNET.

No. 10.

The Lords advised the debate in the reduction raised by the Lady Arbuthnot and her children of her husband's nomination of tutors, *contra* Sir Thomas Burnet of Leys, and the other tutors thereing named. The reasons were; *1mo*, It was written without his warrant and order; *2do*, It was not read to him. The Lords repelled these two reasons, in respect of the answers, *viz.* That they offered to prove a mandate given, and that he had a testament of the same tenor made by him seven years before, and he caused renew it, with some alterations; *2do*, Offered to prove, that it was either read to him at the time of subscribing it, or the substance and import of it was repeated to him, or he thereafter recapitulated the heads of it to himself: Both which answers were found relevant, and admitted to the defender's probation.

A testament was reduced, because the order for drawing it was in May, but it was not signed sooner than August, and not then read over to the party.

The *second* reason of reduction was, That he was in a raging fever when he subscribed the testament, and had a *deliquium* that same day. Answered, They offered to prove acts of reason and judgment both before, at, and after subscribing, and *probatis extremis præsumentur media consimilia*. The Lords, in such a case, would not determine a precise relevancy, but allowed a conjunct probation to either party, to prove in what condition the defunct was about the time of signing this nomination, to expiscate the truth, before answer. There was a *third* reason of reduction found relevant, *viz.* That the tutors had taken out the writs, and meddled with the same before making of inventory; which, by the late act of sederunt, is declared to be a ground of removing tutors as suspected.

1695. *February 8.*—At advising the probation in this reduction, the Lords found it clearly proved, That he was then of sound judgment, and not delirious, as was