

order was not special, to what sum he would have the payment ascribed. And whereas the subscribed account, by the decret, was also made to bear annualrent, it was thought James might be reponed against that, because it was only as holding him confessed on a promise of payment of annualrent.

*Vol. I. Page 584.*

1693. *November 17; and December 27.* DAVID SCOT of SCOTSTARBET against GEORGE SCOT of GIBLISTON.

THE reduction and declarator, pursued by David Scot of Scotstarbet, against Mr George Scot of Gibliston, his cousin, was this day debated and advised. Scotstarbet's father had given a bond for 200,000 merks, to Mr George's father, (they being full brothers-german, to exclude any deed of their father's, in providing it to his children of a second marriage,) to be paid by his extraneous heirs; excepting always the heirs-male and of line of his own body, who were noways to be liable in the payment or performance of this. Mr George, on this bond, had served an inhibition: Scotstarbet craved the said inhibition to be reduced, and that the bond laid no obligation on Scotstarbet to fulfil the same, but that he was absolute fiar and proprietor of his estate.

The Lords found, No execution nor diligence could pass on this bond against Scotstarbet; and, therefore, reduced the inhibition as null and informal: but sustained Mr George's defence against the declarator; and found, that Scotstarbet could do no voluntary, gratuitous, or unnecessary deed, to frustrate, evacuate, and elude that bond: for they thought it behoved to operate something; and if it had not at least that effect, it would signify nothing. Four of the Lords thought the bond could never hinder Scotstarbet from disposing of his estate as he pleased, being absolute fiar, and under no irritant clauses; and that the most it could import was a tailyie; but that he could alter, break, and infringe, at his pleasure, there being no prohibitory clause save the obligation to renew it aye and while Mr George's father was secure. There was also a part of the Lords who thought the bond not only obligatory *quoad* the restrictive effect foresaid, but were also for sustaining the inhibition to secure it, at least, against gratuitous alienations; seeing, an inhibition is not so much an execution as a diligence for security. But the plurality carried it *ut supra*.

*Vol. I. Page 570.*

*December 27.*—The Lords reävised that affair decided *supra*, 17th November 1693, between Mr George Scot of Gibliston and Scot of Scotstarbet; and found, that, by gratuitous deeds, they meant only his disposing to extraneous persons, but that it noways hindered him to give his estate to his daughter, or any descendant of his body. Some thought it could not impede him to give it to whom he pleased; seeing this bond was but of the nature of a tailyie, which, being a mere destination, can be broken and inverted at pleasure, unless it contain irritant clauses. But the Lords would not go that length; and only declared it should not bind him up from bestowing it upon any of his own issue, or blood; seeing the bond behoved to operate something. *Vol. I. Page 585.*