and, therefore, they assoilyied Gordon. Some were for examining Birrel, to see what he did with the money; but it was represented that he was dead.

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1694. *February* 7. PATRICK BELL, Merchant in Glasgow, *against* WILLIAM COLQUHON of CRAIGTON.

THE Lords found the king's commission to the Earl of Loudon, to sell the annuities, was not restrictive, that they should be only sold to heritors and life-renters, but even to them who had no interest in the land, bearing the words *et aliis;* and that thir annuities are not discharged by the Act of Grace in 1673, seeing they were disponed before it; and that the king could remit none but these which were undisposed on: and found none could be liable for them but only the heritors and possessors for the respective years in which they were acclaimed, they not being *debita fundi,* but only *fructuum:* but in regard there was yet 600 merks of the price in the buyer's hand, allowed the disponer to be cited *incidenter* in this process, to answer why a part of the said price should not be made forthcoming for the annuities of these years wherein the disponer possessed, after deduction of purging incumbrances, and other real burdens affecting the land. *Vol. I. Page* 603.

1694. *February* 7. MR WILLIAM IRVING *against* JOHN IRVING of DRUMCOLTRAN, his Father.

THE Lords found it no sufficient probation of majority, that, at the time of his subscribing the discharge to his father, he was laureat, and passed the college, and had been at a writer's chamber; and, therefore, allowed him to prove his minority, he always instructing that he had revoked, or intented a reduction of it, *intra annos utiles:* and found it was not so *in rem versum* as to hinder his reduction, that the sum in the discharge was for his apprentice-fee; because it is a *debitum naturale* on a parent to educate their children; and lawyers think the *impensæ* bestowed that way *nec veniunt in computationem legitimæ nec in collationem bonorum.* As to the 500 merks which the father left to the determination of friends, the Lords ordained them to be charged with horning, to meet and give their opinion.

And, *quoad* the last article of his share of his sister's portion of 2000 merks, it was argued, that the term of payment being her marriage, and she dying unmarried, it was a conditional bond, which never took effect, but evanished; so that the marriage was not merely the term of payment, but the term of existence of the obligation.

ANSWERED,—There was a substitution in the bond of provision; for, though it was not payable to her till after her marriage, yet it bore, that, failing of her, it should fall to her brother, where the clause of her marriage is not repeated; and, in pupillar substitutions, the substitute took place though the institute did not.

The Lords thought the clause dubious; but, in regard the father was alive,

they allowed him to depone what was his meaning; whether his sons should succeed to this portion of their sister's, in case of her being married, or *quandocunque;* for though she had disponed it by her contract, yet, if the marriage had dissolved within the year, it would have devolved to the substitutes.—See *Durie, 17th January* 1665, *Edgar;* and *22d February* 1677, *Belshes.*

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1694. *February* 7. LADY CATHARINE and MARGARET BOYDS *against* The EARL of KILMARNOCK, their Nephew.

THE Lords sustained their exhibition for production of the bond of provision given by their brother; and, *medio tempore,* during the dependence of the process, allowed the annualrent of the sums therein contained, for an aliment; without determining the general point, How far elder brothers are bound, *jure naturæ,* to aliment their younger brothers or sisters. And, in the Earl's reduction, it will occur to be debated, how far thir bonds of provisions may be quarrelled as granted *in lecto,* seeing the granter's father had a faculty to burden the lands, which he made no use of; and if it was not so personal, that his son, the last Earl, could not make it the onerous cause of granting thir bonds.

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1694. *January* 3 *and February* 7. SIR ROBERT GORDON of GORDONSTON *against* MARY STEWART, Relict of Commissary Wood.

HALTON reported a bill of suspension presented by Commissary Wood's relict against Sir Robert Gordon of Gordonston, and Major James Wood, cautioner in a former suspension, wherein she offered to pay the debt, providing the charger would assign her to Major Wood's bond of cautionry; which Sir Robert refused. As also, compearance is made for the Major, who ALLEGED they could not recur against him, because her husband had not only given a new bond, after his becoming cautioner for him, but also she herself had granted a bond of corroboration, since her widowity, for the debt, without any relation to the Major's cautionry, or any clause, that, on payment, they shall be assigned to all the security that was already taken for the debt. And the question was, Whether it accresced. For, in the case of more suspensions, it was thought, that the cautioner in the first suspension would be bound to relieve the cautioner in the second; and he behoved to be first discussed; and the second was only *subsidiariè* liable, and it is likely would not have engaged, had not he seen that sufficient caution was found before. But it was urged, That the granting of a bond of corroboration differed from a cautioner in a second suspension, seeing he became principal *correus,* and had relief only against the debtor, and not against his cautioner. And it was asked, if the cautioner might not have given a gratuitous discharge, to Major Wood, of his cautionry; and it was yielded he might, any time before taking the bond of corroboration; but, after that, it was