

on the process, and Sir Robert Colt, who managed it, was dead. The Lords opened this decreet, and reponed Sir Adam's creditors against it.

Then they craved allowance, amongst many other articles, of £1200, paid Culterallars, as due to the Lady Megetland, his wife, by Rig.

ALLEGED,—It was an heritable sum, and the *jus mariti* would not carry it. ANSWERED,—He had a general disposition from her. REPLIED,—Its date is after this payment. DUPLIED,—It accresces to sustain the *bona fide* payment and discharge; and there is none to quarrel it.

The Lords inclined to allow this article.

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1695. *January 22.* CARNEGIE of PHINEVEN *against* The EARL of PANMUIR and MR HARRY MAUL, his Brother.

THIS was a reduction of an assignation, granted by the deceased Mrs Mary Maul, of her portion, to Phineven, and of his decreet *in foro* reducing Strathmore's assignation, and declaring his right to the sum, at Panmuir's instance, as having got a posterior right thereto from Mrs Mary. The great difficulty was, how to get over the *res judicata*; and the Lords having read the decreet, they found only compearance made for Strathmore, and none for her; and, therefore, declared it was in absence *quoad* her and her posterior assignee, notwithstanding he produced a reduction raised in her name. And so, Panmuir being reponed, he ALLEGED, The assignation to Phineven was but of the nature of a substitution, failing heirs of her own body; and she was still fiar; and he had, after that right, counted to her as factor, and so passed from it; and she had power to alter; and it was on the matter but *donatio mortis causa*; and was granted by her in her minority; and her curators consenting to it were Phineven's father and brother. But he was ordained to be farther heard against these grounds. It was queried, Whether or not Mrs Mary's creditors could not have affected this sum, or if she might have called for a part of it, in case of necessity, by sickness or the like, it not being for onerous causes.

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1695. *January 23.* SIR DONALD BAYN of TULLOCH *against* NISBET of DIRLETON and SIR WILLIAM BRUCE.

[See the prior part of this case, page 128 of this volume.]

CROCERIG reported Sir Donald Bayn of Tulloch against Nisbet of Dirleton and Sir William Bruce, about the patrons of Mr John Bain of Pitcairly's two mortifications of burses, the one to the college of Edinburgh and the other to St Andrew's. The Lords had found, Though it was ungenteel, *et contra bonos mores*, to fill up their own names as patrons, yet it was lawful in itself. Tulloch now repeated his reduction, that the writ, empowering them to nominate the patrons of these mortifications, was granted by Pitcairly *in lecto*.