

father's relict, for refunding the price of sundry unbound books and others, disposed to him and intromitted with by her.

ALLEGED,—The disposition only gave him right to all the unbound books of his own printing that should be lying beside him at the time of his decease; *ita est*, most of them were either bound or sold before his decease: And, as to printing paper, that cannot fall under the disposition, which only mentions the materials for printing, such as presses, &c.

ANSWERED,—She must be still liable, because of her fraudulent precipitation in causing sell off the greatest part of the unbound books *per aversionem*, and binding the rest, of purpose to frustrate and evacuate the design of his father's disposition; *et dolus nemini debet prodesse*: And the Lords, in like cases, have often repudiated it; as, where molosses were disposed, that should be in such a sugar-manufactory at the time of one's decease, he cannot, *in lecto*, reboil them to defraud the other's right: and, in the late *Viscount of Oxford's* case, who bought lands on his death-bed with a sum of money, then lying beside him, to prevent his Lady's having a third of it, the Lords thought this was premeditated; and the tutors were forced to compone it. See *January 1679, Grant against Grant*, where such a disposition did not prejudice the relict's part of the moveables. And as to the printing paper, it is certainly a material, and falls under that general denomination.

The Lords found, Any selling or binding of books at and about the time of his sickness, more than what he was in use to do before, was nimious diligence, and could not be sustained against the pursuer's disposition; and allowed a trial to be taken *de more solito patrisfamilias* in his own time; and found, That *charta bibula*, which is fit for no other use but printing, falls under the appellation of materials, and so is contained in his disposition; and that the ballads likewise belonged to him, they being unbound books *in suo genere*, and which use not to be bound.

*Vol. I. Page 743.*

1696. December 15. LORD SALTON against SIR PATRICK OGILVIE of BOYNE.

RANKEILOR reported a case between the Lord Salton and Sir Patrick Ogilvie of Boyne, being a declarator of trust, that any right my Lord Boyne had to the lands of Pittowlzie and Pittendrum from the Lord Salton's father and grandfather, were only securities for cautionaries and sums of money owing him. Boyne contended they were irredeemable. One of the grounds to enforce the trust was, That the price was to this hour standing blank in the disposition he produced; *et nulla est emptio sine prætio, et tunc tandem contrahitur venditio cum de prætio convenerit*,---sect. 1, *Instit. de Empt. et Vendit.*

ANSWERED,—The price may be conferred *in arbitrium tertii*; and it is cleared here by a back-bond.

REPLIED,—That back-bond was never accepted, and contained nothing that was near to an adequate price; and it is unsuitable that the price should be conferred *in arbitrium emptoris*.

There being sundry other grounds to adminiculate a trust, the Lords resolved to hear it in their own presence.

*Vol. I. Page 743.*