

1697. December 16. SANDS of Langsyde *against* SANDS in Shyres-mill.

SANDS of Langsyde pursues a reduction of a disposition of his lands now filled up in the name of John Sands in Shyres-mill, his nephew, on this reason of fraud and circumvention, that he had subscribed it blank many years ago, and having taken a sickness 18 months, wherein physicians gave him over, his nephew prevailed with his wife to steal this blank disposition out of his cabinet, and deliver it to him, whereupon he filled up his own name in it, and took saine, and served inhibition thereon; and therefore craved his nephew might condescend and prove how he came by the said disposition, and when his uncle gave it. *Answered*, I am bound to prove nothing, but to oppone the right now in my hands, which presumes a fair delivery, unless you convel and redargue it by my oath.—THE LORDS found he needed not prove delivery; but the defender having raised a declarator against his uncle, that he should contract no debt subsequent thereto, till first the cause thereof be cognosced to be onerous, that he may not defraud nor disappoint the effect of his disposition; *answered*, The same is expressly burdened with all debt contracted or to be contracted by him, at any time in his life, so he may grant a bond equivalent to the value of his estate, by which it may be affected, adjudged, and carried away. *Replied*, That clause must be *civiliter* interpreted only of necessary debts. THE LORDS considered the disposition being gratuitous, without any onerous cause to support it, he might in the same manner grant voluntary and gratuitous bonds, seeing that power of contracting was equivalent to a power of revoking and altering; and therefore inclined to assoilzie from the nephew's declarator, and found he might contract debts or grant bonds at his pleasure.

No 8.  
A party disposed gratuitously, with a faculty reserved to burden with debts *real and true*. Found that the debts must be so far onerous, as to arise out of rational acts of administration.

1698. January 26.—This being again reported, and the clause bearing, that the debts must be real and true; the LORDS found this clause behoved to import more than the debts not to be false, but also that they were not mere gratifications to evacuate the disposition, but they behoved to be so far onerous as to be rational deeds of administration. What if he borrows money, and then spend or gift it, or mortify it to a pious use in his own lifetime?

*Fol. Dic. v. I. p. 144. Fountainhall, v. I. p. 802.*

1699. December 15. FULLERTON and Others *against* ———.

THE LORDS advised the mutual declarators pursued by Fullerton of that ilk, and Bailie of Monkton, the Laird of Adamston, and others, for the right of gathering the wreck and wair on that coast, mentioned 16th July 1697\*. These neighbouring gentlemen having been in use to gather wair for gooding their land, not only on the shore opposite and adjacent to their own lands, but also

No 9.  
Sea wreck comes not under the clause *cum piscationibus*.