

against *the Creditors of Mountcastle*. *2do*, Mr Robert's wife being the said Lady Drum's aunt, he was her uncle-in-law, and so he acted *contra bonos mores* to make merchandize of her; and, both by duty and relation, was bound to promote her marriage without a bribe; and the Lords have found a step-father ought to take nothing from a step-daughter's husband for making the marriage; and see the like decided in the case of a Tutory, *5th March 1629, White against Douglas*. *3tio*, The bond should be reduced; because, in a communing betwixt them, he declared he would deliver it up, and refer his gratuity to friends; and, instead thereof, gave her a copy to burn, and kept up the principal bond.

ANSWERED to the *first*, There is nothing more ordinary than to have blanks in bonds, and to fill them up at delivery; and it would endanger many writs if that were sustained to be a nullity, that it appears the writ has been *ab initio* blank; so it can only be proven, by the defender's oath, that it was not filled up till after her marriage. To the *second*, It cannot be denied that, as a woman may grant a bond, if perfected before the marriage, so a party may receive a *proveneticum* and gratuity for procuring a profitable marriage; and the Lords did lately sustain the same to *Sir John Cochran against the Earl of Buchan*. As to the *third*, Being a circumvention, the same is denied as calumnious and false.

REPLIED,—Whatever a stranger might take, he who was a relation could not take so exorbitant a reward on the very brink of the marriage; and what was decreed to Sir John Cochran was not a gratuity, but his real debursed expenses.

The Lords ordained the case to be reasoned in their own presence.

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1700. *February 21. JOHN MURRAY against SIR PATRICK AIKENHEAD'S BAIRNS.*

IN a case between Mr John Murray and Sir Patrick Aikenhead's Bairns, a horning being given in by mistake to be registrate, when the debtor had paid and satisfied it; the Lords granted warrant to the Clerk, (seeing it was only noted in the minute-book, and not yet recorded, being quarrelled *de recenti*;) to score it in the minute-book, and not to registrate it, but in place thereof to record this bill and deliverance for his warrant, seeing the denunciation was preposterous and unwarrantable. And this was done to secure him against the certification of the 14th Act of Parliament 1693, importing deprivation: though this takes away the *jus quæsitum fisco*; and the regular method is to relax and take the gift of their own escheat; yet, when the diligence appears evidently to have been illegal, and is not recorded, the Lords have been in use to relieve the subjects of the expensive way of passing a gift through the seals.

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1700. *February 24. LADY SUSANNA LORT against SIR HUGH CAMPBELL of CALDER.*

By articles and indentures of marriage passed in England, after their form, in

1688, betwixt Alexander Campbell, younger of Calder, and Elizabeth Lort, daughter to the said Lady Susan, she is provided to £700 sterling effective, to be paid yearly in London, by way of jointure; and the children are provided, first in a £1000 sterling in fee, and then to £1500 sterling; and because, by the English law, a wife cannot have action against her husband, therefore a trustee is interposed by way of *fidecommis*. to pursue for implement of her provisions; and it is further covenanted, for the tocher of £4000 sterling paid down, that the said Lady Susan shall have right to the £700 sterling for the use of her daughter; and that the lands shall be settled and assured for the heir of the marriage, as her learned counsel at law shall advise: upon which clauses the said Lady Susan pursued Sir Hugh, not only to secure her daughter, but also the heir; and, for that effect, to serve him heir to his father.

ALLEGED,—As to the relict's jointure, they acknowledge the Lady has a title and interest to pursue for implement; and they are willing to perform: but, *quoad* the fee to the heir of the marriage, there is no clause in the agreement stating the *jus exigendi* in her, whereby she is empowered to *suit* implement for the heir of the marriage.

ANSWERED,—By the foresaid articles, she may claim the fee to be secured by advice of lawyers, in place of whom the Lords now succeed: and if these articles were to be extended conform to the Scots style, persons would be named at whose instance execution should pass for implement, not only of what is provided to the wife, but likewise of the obligations in favours of the heir of the marriage.

Some of the Lords doubted what the import of the articles was; yet the plurality found they gave her the *jus exigendi* for the son as well as the mother; but found he behoved to be served heir before any procedure in the cause: and if the child's uncle, who is his tutor-in-law, refuse or delay to serve him, he may be removed, as supect, by a process, but not summarily on a bill. Which was craved this very week by *Hamilton of Reidhouse* against *his Curators*, for not making inventories: but was refused by the Lords, and remitted *ad actionem ordinariam de removendo tutore*.
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1700. February 29. GEORGE NAPIER, *alias* MAXWELL of KILMACHEW, *against* SIR JOHN SHAW, *alias* SIR JOHN HOUSTON.

GEORGE Napier, *alias* Maxwell of Kilmachew, as apparent heir to Sir George Maxwell of New Wark, his father, gives in a petition representing, that Sir John Shaw of Greenock, and now Sir John Houston of that ilk, were carrying on a sale of his lands; whereas it was not proven that his father died bankrupt; and that he was but lately past his minority, and intended to serve himself heir *cum beneficio inventarii*, conform to the late Act of Parliament 1695; and that the estate has been under sequestration these ten or twelve years; and Houston was cautioner for the factor, and so would be paid of much of his debts by that introduction; and therefore craved he might be admitted to his defences, and the roup stopped *medio tempore*.

ANSWERED,—The probation of the rental being closed and advised, and the