have been a reason of suspension, it can never defend against the deforcement: for there was no warrant in the letters to accept of any such bond, but only to incarcerate. Nor can any man stop execution upon pretence of injustice, which can easily be redressed by suspension or otherwise; seeing private persons are not to be judges in their own cases *et non est singulis concedendum quod per magistratum fieri debet.* 2. Nothing is more known in law than that in cases of a criminal nature, emission of words is probable by witnesses. So, 18th *February*, 1672, a messenger, citing the Earl of Nithsdale, at the instance of some of his feuars, being beat by the Earl's servants; the libel of command, Ratihabition, and direction, was sustained against the Earl even when he himself was not present. And if it were not so, the greatest villany might be committed *impune*, by command and hounding out; since it is not ordinary to give writ in such cases, where a great deal of caution and secrecy is used.

The Lords found the libel of deforcement against Drumelzier not relevant, and therefore assoilyied him. *MS. page* 61.

1714. *July* 2. MARGARET TOD, eldest daughter to the deceased OLIPHER TOD, Shipmaster in Leith, and CAPTAIN PATRICK BAPTIE, Shipmaster there, her Husband, for his interest, *against* OLIPHER TOD, her Brother, and his Curators.

OLIPHER TOD, Shipmaster in Leith, by his disposition, dated 25th August, 1710, assigned 6000 merks to Olipher his son, 5000 merks to Margaret, his eldest daughter, 4000 merks to Helen, his second daughter, and 2000 merks to each of his two youngest daughters; and by a general clause, assigned in favour of his son and daughters, equally and proportionally among them, all and sundry other sums, goods, gear, &c. that should be resting to him the time of his decease. Thereafter, 7th *April*, 1711, he writ from London to Robert Tod, merchant in Edinburgh, whom, with other friends, he had appointed tutors and curators to his children, a letter containing these words: "There will be little to add to the former testament left with you; only I think Olipher may be allowed L2000 out of the remanent stock, and the rest divided amongst them equally, above the proportions nominated.—So I pray the Lord may give them grace," &c. After the father's death, Margaret Tod, and Captain Baptie, her husband, pursue Olipher Tod her brother, and his curators, to make payment of the provision. In which process the meaning of the father's letter aforesaid came to be controverted.

The son contended that the said letter writ by way of codicil to the uncle, entitled him not only to L2000 of the remanent stock as a *præcipuum*, but also to an equal share of what was, with the rest of the children. Because, 1*mo*, the father appointed to get the foresaid L2000; and ordered the rest to be divided amongst them, that is among them equally; of which the son was a principal one, being heir to his father. 2*do*, If there were any dubiety in the word *them*, the same is taken away by the immediately subsequent clause, where the father prays for grace to them; from which prayer the son could not be understood excluded: and therefore he must be understood also included in *them*, in the former clause.

ANSWERED for Margaret Tod,—1*mo*, By the former testament, or general clause in the special disposition, all the children were to have an equal share of the remanent stock; and the missive-letter makes no alteration in the general partition, except giving to the oldest L2000 out of the remanent stock. And by the word *them*, he certainly meant his daughters, whom he had not spoke of expressly before, and not his son, expressly mentioned before. Besides, a dubious expression in a codicil, doth not derogate from the express words of a preceding testament, which are drawn *ad mentem testamenti.—Menoch de presump. Lib.* 4. *pres.* 117. *N.* 3. 2*do*, The signification of *them*, in the latter clause, can have no influence on that word in the former: because, 1*st*, In the latter clause, touching eternal and spiritual concerns, the children had no separate or interfering interests; whereas, in the former clause, about their temporal concerns, the interest of one derogates from that of another. 2*d*, If the father had given his blessing to his son expressly, and then given it to *them*, the latter blessing had been applicable only to the daughters.

The Lords found that the son ought to have L2000 as a *præcipuum*, beside an equal share with the daughters. *MS. page* 74.

1714. *July* 21. MARGARET and ELIZABETH THOMSON, daughters to the deceased JOHN THOMSON, Merchant in Montrose, and Others, *against* JOHN NICOL, Skipper in Alloway.

IN the action of reduction and suspension, at the instance of Margaret and Elizabeth Thomson, and others, of a decreet of Session at John Nicol's instance, against them,—The Lords found, that the said decreet being pronounced against the said Margaret and Elizabeth Thomson, as minors, and therein so denominated; and against David Skinner, Provost, and Mr. Alexander Thomson, Doctor of Medicine in Montrose, as tutors and curators to them; proved against the obtainer of the decreet, that the said Margaret and Elizabeth Thomsons were minors at the time; unless the contrary, viz. that they were then majors, were proven. Because, though it be true in general, that he who offers to reduce a deed upon the head of minority, ought to prove the same, according to the rule, *actori incumbit probatio*; that needs not to be done where the deed itself, against which restitution is craved, owns the minority: *verba enim operantur contra proferentem.*

MS. page 93.

1714. *July* 22. EDWARD MULLIKINE, indweller in Hillsborough, in Ireland, *against* JAMES BROWN, Merchant in Edinburgh.

MARY DUMBALL came from Ireland, having married James Brown in Edinburgh, with whom she lived twelve years. After her decease, Edward Mullikine