

ANSWERED for Margaret Tod,—*1mo*, 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.* *2do*, The signification of *them*, in the latter clause, can have no influence on that word in the former: because, *1st*, 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. *2d*, 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 decret of Session at John Nicol's instance, against them,—The Lords found, that the said decret being pronounced against the said Margaret and Elizabeth Thomson, as minors, and therein so denominat-ed; 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 decret, 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