

PERSONAL OBJECTION.

10449

of her jointure in favours of her son, the defender, without the consent in writing of the persons mentioned in the contract of marriage.

No 24

Clerk, *Mackenzie.*

*Fol. Dic. v. 2. p. 82. Bruce v. I. No 129. p. 168.*

1724. December 30.

JOHN CUBBISON of Cuffenoch against JOHN CUBBISON, his second son.

JOHN CUBBISON the father had taken a disposition from Sir William Gordon of the lands of Blackcraig, to himself, his heirs and assignees; but, when the charter was granted by Sir William the superior, the lands were disposed to the father in liferent, and to John the son in fee; upon this charter sasine was taken, and the father was attorney to the taking of it.

The father raised reduction of this charter, as conveying the fee to his son, contrary to the tenor of the original disposition, and without any written warrant under his hand for so material an alteration of the right, which he contended was necessary, since a right constituted by writ could not be otherways transmitted than by writ, *Craig, L. 2. D. 2. § 11. Spottiswood, p. 242.*

It was answered for the Son; That the father's consent to the settling of the fee in him, must be presumed from his accepting, using, and keeping the charter, especially when he acted as attorney in taking the sasine; and, as a farther evidence that he homologated this disposition of the fee, it appeared, that some years thereafter he signed a bond along with his son, in which the son was designed of Blackcraig, and this designation was not quarrelled by the father.

THE LORDS found, that the charter and sasine conveyed the fee to the son, and repelled the reason of reduction.

Reporter, *Lord Grange.*

Act. *Ju. Boswell.*

Alt. *Ju. Ferguson, sen.*

Clerk, *Dalrymple.*

*Fol. Dic. v. 4. p. 77. Edgar, p. 140.*

1725. December 24.

JACOB GOMES SERRA against ROBERT late Earl of CARNWATH.

JACOB GOMES SERRA having sued Robert, late Earl of Carnwath, upon his bond or obligation, for the payment of L. 8000 Sterling, laid out by him at the Earl's desire and for his behoof; the defender moved an objection, That, by reason of his attainder, he was under an incapacity to contract, or to bind himself in payment of any sums, and therefore the obligation granted by him

No 25.

A father having been the attorney in taking sasine on a charter to his son in fee, and himself only in liferent, was found barred, when afterwards attempting a reduction on account of the want of his consent.

No 26.

Found, that there lay a personal objection against an attainted person's objecting his incapacity to contract.