

Refused a reclaiming bill, desiring that the sum might be divided betwixt the man and woman's heirs, and gave it solely to the survivor's heirs.

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1739. *June 23.* ROBERT GORDON *against* CREDITORS of BROUGHTON.

[Elch., No. 2, *Personal and Real*; Kilk. No. 2, *ibidem*; C. Home, No. 120; *Rem. Dec.* No. 10.]

THE case was this.—A father disposed his estate to his son, and burthened the resignation with his hails debts, contained in a particular list subscribed by both, and ordained that this burthen should be insert in the infestment following thereon; which was accordingly done. The list referred to was registered in the register of the Council and Session, but was not inserted either in the disposition or infestments following thereon. *Quere*, Were these debts real debts?

The Lords found, unanimously, that they were not; but they differed as to the *ratio decidendi*. Arniston thought that the words in the disposition did not imply a real burthen upon the estate, but only imposed a personal obligation upon the disponee; that the father could never mean to make his debts real which were before personal, but only to bind his son, who had got his estate, to relieve him of his debts.—And it was upon this he founded the decision. But the rest of the Lords were of opinion, that the words, in themselves, did impose a real burthen, but that, in this case, as the debts were not inserted in the disposition or sasine, nor the list referred to registered in the register of sasines, therefore there was no real burthen; because, if it were otherwise, the lands would, in some measure, be exceded from commerce, and the records rendered useless as to them, because it would be impossible to discover from them what burthens affected the lands; so that no purchaser could safely buy them, nor creditor lend upon the faith of them.

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1739. *June 26.* JOHN NEIL *against* SHERIFF of PERTH and PROCURATOR-FISCAL.

[Elch., No. 5, *Wrongous Imprisonment*.]

THE fact was this: There was a *fama clamosa* against this John Neil, as being accessory to burning a minister's house. Two or three people had informed the Sheriff of this, but had refused to sign their information, because, as they said, they were afraid of this John Neil and Kairnmuir, who was suspected to have instigated him to burn the manse. Upon this refusal, the Sheriff ordered his procurator-fiscal to sign an information against John Neil; and, in consequence of this information, he gave a warrant, and apprehended him. He was kept in prison a considerable time, and transported from the prison of