

1752. November 30.

— against —.

AN exhibition was brought against a wife, of certain bills belonging to her deceased husband, which were in her possession. The woman deponed in the exhibition and exhibited the bills indorsed blank, adding this quality to her oath, That her husband upon his deathbed had indorsed them in this manner and given them to her by way of legacy or donation, extending to the sum of 300 merks Scots; and this quality in her oath she supported by a proof of the bills being so indorsed and delivered to her. The question was, Whether this was a valid legacy or donation? And it was agreed among the Lords that though a bill could not be originally granted by way of donation or legacy, yet it might be indorsed by way of donation: it was also agreed that the bill being found in the wife's possession at the husband's death with a blank indorsation, was no evidence of any donation, because men frequently keep bills so indorsed by them, and the wife's possession is accounted the husband's; but the majority of the Lords were of opinion that the quality in her oath, supported by the proof by witnesses, was an evidence of the donation, and they would not restrict it to L.100, which is the sum that may be given by a verbal legacy, but considered it as if the defunct had given out of his hands to his wife upon deathbed a sum of money or any other moveable; which it was admitted he might do to any extent: and there was besides, here, the writing of the indorsation, which made it in some sort equal to a written legacy.

*Dissent.* Elchies.

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1752. December 6. CAMPBELL of Calder *against* ROSE of Blackhill.

[*Fac. Col.* No. 42.]

IN this case the Lords found that a factor is liable for interest upon the rents of lands uplifted by him from the time of a demand made upon him to clear his accounts, by a letter from his constituent, which was about twenty years before the process was raised; so that the factor in this case had the double the balance to pay that he was due. And as there was no factor's fee agreed upon betwixt the parties, the Lords fixed the salary at  $2\frac{1}{2}$  per cent. of the money he uplifted.

*N. B.* This was allowed to be a new decision, and yet some of the Lords were for carrying the thing so far as to find the factor liable for annualrent, not only from the demand, but from a year after the rents came into his hands, as the Lords' factors are obliged to pay by the Act of Sederunt.