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ed at least a servitude of pasturage in the bounds controverted ; yet Abercainrie not being satisfied with that, gave in his protestation for remedy of law at the Bar.

Fountainhall, v. 2. p. 126. & 136.

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Proved or not proved, that a disposition of heritage had been granted.

1766. December 17. DRUMMOND and Others, *against* HUNTER.

JOHN DRUMMOND, having seven children, and being possessed of a considerable moveable estate, with two houses in Edinburgh, executed a trust-deed in 1706, upon this narrative, ' Forasmuch as I have declared my opinion, and made settlement and division of my estate among my wife and children, by a paper apart, of the date hereof ; which houses,' after an enumeration of the particulars of his estate, ' annualrents, bonds, obligations, heritable and moveable subjects, or others, which shall belong to me the time of my decease, are to be divided in eight parts or shares among my children, two parts to my eldest son, and the remaining six parts among my other children.'

A regular book of accounts had been kept by the Trustee, to whom the subjects were assigned, for behoof of the children ; and to this book there was a docquet annexed, which was signed by all the children, and bore, that John Drummond, deceased, ' in the settlement of his affairs, did make division of his fortune, real and moveable, into eight shares,' &c.

In 1713, John Drummond, the eldest son, executed a discharge and renunciation, ' of all he could ask or claim, by virtue of any bond of provision, or other writ conceived in his favour, or by any other right or title competent to him.'

At the distance of 60 years, William Hunter, the grandson of John Drummond, the eldest son, served heir to his great grandfather in the two houses, which had been made over by the younger sons to their sisters ; and they, having no feudal title in their persons, brought an action against William, concluding, that he should be decerned to make up titles, and convey in their favour.

As the deed referred to in the settlement was not produced, a great deal of argument was used, and many decisions quoted on both sides, upon the question, how far the settlement could be effectual to carry heritage. Most of these are to be found, Dictionary, *voce* TESTAMENT. Some more recent decisions were also appealed to ; particularly, 18th January 1764, Burgess *contra* Stanton, No 42. p. 4484.

But it is unnecessary to recapitulate the arguments more fully, the Court having taken up the case upon a different medium, and pronounced the following interlocutor :

" THE LORDS, having considered the narrative of the deed executed by John Drummond elder, with the docquet subjoined to the fitted account, signed by

John Drummond younger, and whole other circumstances of this case, find sufficient evidence that John Drummond elder did make a settlement of the same date, by which he divided his whole heritable and moveable estate into eight shares, whereof two parts were given to John Drummond, his eldest son, and the remaining six parts to his other children; and, therefore, and in respect of the discharge and renunciation executed by John Drummond younger, repel the defences, and find that he must convey the houses libelled to the pursuers."

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Act. Rac.

Alt. *Montgomery, Maclaurin.*

G. F.

Fol. Dic. v. 4. p. 168. Fac. Col. No 50. p. 278.

S E C T. XI.

Propinquity.—Simulation.—Rent of Lands.

1567. April 7.

HALIBURTON *against* L. HALTON.

ANENT the action pursued by George Haliburton of ——— against the Laird of Halton, for redemption of the mill of Gogar, annailzied by umquhile George Haliburton, father to the said pursuer's grandfather, it was *alleged* by the said defender, That the said pursuer was no heir to the said George, who annailzied the said mill, and took reversion thereof to him and to his heirs. It was *alleged* by the pursuer, That he was heir by progress to the said umquhile George; and to prove the same, he produced a sasine, given by the Laird of Halton, of the lands of Gogar, superior thereof, to umquhile Patrick Haliburton, grandfather to the said pursuer; which sasine called the said Patrick son and heir to the said umquhile George, annailzier of the said mill; and also, the said pursuer produced a sasine of the said lands, given to George Haliburton, goodsire, as son and heir to the said Patrick; and also, he produced an instrument of sasine of the said lands, given to William Haliburton, father to the pursuer, as heir to his father George; and also, produced an instrument of sasine, given to himself, as son and heir to the said umquhile William, his father. It was *alleged* by the defender, That the sasine produced of the said Patrick proves nothing to the producer's effect, nor instructs not his summons; because the said instrument bears, that the superior gave sasine of the lands of Gogar to the said Patrick, calling him son and heir to the said George; which words were

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Found, that, *in re antiqua*, the superior's sasine, naming a man, son and apparent heir to another, was sufficient proof of propinquity, *even contra tertium.*