

with an instruction that they admit the confirmation, as offered ;" altering the interlocutor of Lord Auchinleck.

Act. Ch. Hay. Alt. A. Murray.

1778. *February 14.* ANDREW WELSH *against* JAMES WELSH and OTHERS.

TUTOR AND CURATOR.

Curators removed as suspect.

[*Faculty Collection, VIII. 27; Dictionary, 16,373.*]

COVINGTON. Where there is a wrong, there must be a remedy. Perhaps the pursuer may not have a right to apply to have the curators removed ; but you may declare him free from his cautionary obligation ever since the date of his protest and requisition.

BRAXFIELD. Seeing the case to be as it is, we cannot leave this minor in so bad hands.

KAIMES. I would relieve the cautioner, ordain the curators to find a new cautioner, and, if they do not, remove them.

On the 14th February 1778, " The Lords found the cautioner relieved, from the date of his requisition, appointed the curators to find a new cautioner in ten days, with certification that, if they failed, they should be removed as suspect."

Act. G. Ferguson.

Reporter, Hailes.

1778. *February 18.* JAMES CAMPBELL and OTHERS *against* JANET SOMERVILLE.

BANKRUPT.

A postnuptial Provision by a Husband, *obæratu*s, on his Wife, how far good against Creditors ?

[*Faculty Collection, VIII. 29; Dict. 1000.*]

KAIMES. This liferent is not a provision in a marriage-contract, but a donation revocable at pleasure : it is without an onerous cause, and creditors

must be preferred. Every debt contracted by a man at any time will be understood, *pro tanto*, as a revocation of such a gratuitous right.

COVINGTON. The grant of the liferent was, *pro tanto*, implement of the marriage-contract. The wife is preferable to the possession, but she must impute the rents in part payment of her annuity.

BRAXFIELD of the same opinion. The contracting of debt is an implied revocation of the gift. If there were funds sufficient at the death of the husband, the wife may take the donation absolutely: if not, she can only hold it in part payment of her annuity.

On the 18th February 1778, "The Lords assoilyied from the reduction, but found that the liferent of the house must remain, as a security *pro tanto* of the annuity, reserving to the defender to operate total payment out of the deceased husband's effects, if any there be;" varying Lord Ellick's interlocutor.

Act. M. Ross. *Alt.* A. Rolland.

1778. February 19. JOHN M'DONALD of Breakish *against* JOHN M'DONALD of Clanranald.

WRIT.

Objection to a deed not mentioning the number of pages.—Not stamped.

[*Faculty Collection, VIII. 28; Dictionary, 16,956.*]

BRAXFIELD. The objection on the statute 1696, is not good,—it applies not to this case; for the whole deed is written on one sheet of paper. As to the other objection,—this is a contract, and it ought to be stamped. But still the defect may be supplied. I have known papers taken out of process, and sent to London to be stamped.

KAIMES. I doubt of this being a contract. It is a minute previous to a contract: but then a strong objection occurs, that thus the revenue will be defrauded.

JUSTICE-CLERK. If parties may make a solemn contract, and then throw in a clause, obliging themselves to extend, on stamped paper, what is already, in effect, extended, and if this shall be held free from the stamp-acts, that branch of the revenue will be lost.

On the 19th February 1778, "The Lords repelled the objection on the Act 1696; but found that the pursuer cannot proceed, until the agreement founded on is stamped."

Act. P. Fraser. *Alt.* Ilay Campbell.
Reporter, Covington.