

of Convie, upon the passive title as successor *titulo lucrativo* to his father *post contractum debitum*,—the said Duncan having proponed a defence upon a disposition granted to him by his father, for an onerous cause; and the onerous cause being condescended on, the same was quarrelled, as not being adequate to the value and worth of the estate disposed to him by his father: as also, the debts he had paid for his father were but voluntarily, without an obligation upon his part to pay the same; whereby, if that should be sustained, it might be in his power to pay what of his father's debts he pleased, and prejudge others of his creditors, whom he would not pay.

This was not decided, but the parties agreed; but the Lords thought it a very considerable point.

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1666. June 7. WILLIAM CRAWFORD *against* ANDREW DUNCAN.

ANDREW Duncan, being debtor by bond to William Crawford, in the sum of 200 merks, and being pursued for payment,—

It was ALLEGED by the defender, Andrew Duncan, That the bond is null, wanting date.

It was REPLIED, There was no necessity of a date, but in case of improbation or preference amongst creditors, or inhibitions; and there needed no condescendence of the date, seeing the pursuer was content to refer the verity of the subscription to the defender's oath. And it being questioned whether or not the ticket, being intrinsically null, wanting date, and the date being referred to the defender's oath, the defender might depon, not only as to the date, but qualification, whereby he might totally elide the bond:—

The Lords repelled the defence, and found, That the defender might have his oath upon the verity of the subscription; and, protesting for a qualified oath, might adject what quality he pleased, for eliding of the debts,—such as minority, or payment.

Which the Lords declared they would take to their consideration, the time of the advising of the oath; as was allowed to Sir James Murray, in the case betwixt the Earl of Kinghorn and him, in January 1666.

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1666. June 26. ROBERT BROWN *against* The HEIRS of ANDREW BRYSON.

ROBERT BROWN having obtained decret, before the commissaries of Edinburgh, against Mary and Anna Brysons, as executors to Andrew Bryson, their father, for payment-making to him of the sum of 2500 merks Scots, addebted by the deceased father to him; and having arrested the said sum in the hands of Alexander Bruce of Broomhall, whom he now pursues for making forthcoming:—

In this process compearance is made for Margaret Bryson, and ALLEGES, She must be preferred to the said Robert, as having only right to the foresaid sum;