

1674. *February.* ALEXANDER BIRNY *against* GORDON of Aberzeldie.

MR ALEXANDER BIRNY, advocate, pursues Gordon of Aberzeldie, upon a bond of pension he had given him of 100 merks yearly, to do his law affairs.

ALLEGED,—It was of the nature of a factory, or a donation, and so revocable at will.

ANSWERED,—Opponed the constant tract of the Lords' decisions, finding pensions valid and obligatory as remunerations, even where the party deserts his employment, in contemplation whereof the pension was first constituted; since it might sustain, as an acknowledgment of bygone services, as Stairs, in his *System, tit. —, Of Annualrents, § ultimo*, shews the Lords have decided. And, in fortification of the bond insisted on, he produced letters under the defender's hand, recommending the prosecution of the particular affairs therein mentioned to him.

The Lords sustained the bond of pension, and pursuit raised thereupon; and found nothing relevant to take it away, but either refusing and declining to serve him, or malversation, and ingratitude, if great; this being *donatio remuneratoria*. Dury, *25th March, 1629, Doctor Strang; 24th July, 1678, Mr William Weir against Calander.*

*Advocates' MS. No. 443. folio 232.*

1674. *February.* RICHARD LOUTHIAN *against* LOUTHIANS, &c.

RICHARD LOUTHIAN, merchant in Edinburgh, for himself and as administrator to Alexander Louthian, his son, pursues Catharine, Alison, and ———, Louthians, as heirs, and upon the other passive titles, and Mr Matthew Ramsay, husband to the said Catharine, for his interest; to ratify the right and disposition of some lands in Edinburgh made to the said Alexander, by George Jolly and Alexander Louthian, his nearest heir, and brother to the said Catharine, Alison, and ———, Louthians.

The DEFENCE was, *Quoad* Alexander their brother, they offered to renounce to be heirs to him: And as to George Jolly, though they were heirs to him, they cannot ratify that his deed in favours of the pursuer, because it is a right granted by him on deathbed, and to their prejudice who are heirs, and is under reduction at their instances upon that head; and which is ready, and they are content to hold the production satisfied, and debate the reasons presently.

Whereunto it was REPLIED for the pursuers, That they will not suffer the defenders to renounce their being heirs to Alexander Louthian their brother; because they insist upon the passive title of being successor *titulo lucrativo post contractum debitum*, in so far as Catharine and Mr Matthew, her husband, accepted a disposition of sundry tenements of lands from the said Alexander, after his ratification and obligation to the pursuer, and thereupon was infest, and has sold and wadset the said lands. As to the second, crave they may be decerned to ratify as heir to