

land, which was provided to heirs-male, in contemplation of this marriage ; but, having differed in some provisions, it was not subscribed ; and, after the marriage, the said William and his spouse were entertained in the family with the father. And therefore, there was no reason to prove the intromitting with the bond, by witnesses, *ex officio*, or otherwise.

The Lords allowed witnesses, *ex officio*, to be examined, how the bonds came in the hands of the said Janet Alexander ; in respect of that evidence, that she had left the family, and married without consent of her father, and that there was a draught of the minute of contract on other terms, without mention of this bond ; but did not grant the oath, either of calumny, or verity of the wife.

*Vol. II, Page 396.*

1676. *January 19.* ————, in Argile, Supplicant.

—————, in Argile, being executor nominate to a defunct ; he gave in a bill to the Lords, representing, that the commissary of Argile, being with the M'Leans, there were letters of intercommuning published against him, and he did not officiate in his office as commissary, and hath no power of deputation, there being no Bishop of Argile ; and, therefore, desired that he might have warrant to intromit with the defunct's moveables, and licence to pursue, from the Lords, as being the King's great consistory, and having authority to supply the defects of inferior courts.

Which desire the Lords granted.

*Vol. II, Page 403.*

1676. *January 26.* DUKE of LAUDERDALE *against* LORD and LADY YESTER.

THE Duke of Lauderdale having disposed his whole estate to his daughter, the Lady Yester, by a disposition before her marriage, and also by her contract of marriage, both containing a reversion upon a rose-noble, by himself, or the heirs-male of his body, he used an order, and obtained declarator *in foro* ; and, having charged my Lord and Lady Yester to renounce and resign accordingly, he offered a draught, which he required to be subscribed for implement. They gave in a bill of suspension upon obedience ; and therewith subscribed a renunciation and resignation.

The Lords, having appointed the suspension to be discussed upon the bill, as they do ordinarily, whenever the charger requires it, the charger having produced the draught as his special charge,—it was ALLEGED for the suspenders,—That they offering a subscribed renunciation for obedience, they were not obliged to object against the charger's draught ; but their reason was unquestionably relevant, and instructed by the renunciation produced, unless the charger could object against it.

It was ANSWERED,—That, in a matter of this importance, of the Duke's whole estate, he was not obliged to accept of a renunciation, unless it were subscribed before such persons as he would desire to be present ; that there might be no

question of the truth of the subscription, by the witnesses disowning the same : so that this renunciation, being only to be considered as an unsubscribed draught, and two draughts being offered, the charger was ever allowed to make his own special charge.

Which the Lords sustained ; and allowed the suspenders to object.

The suspenders OBJECTED, That, by the charger's draught, the Lord Yester was required, not only to consent to his lady's renunciation, who is fiar, but to take burden for her ; which, though oft-times it be in writs of consent, yet, without express consent, the husband is not obliged to take burden for his wife ; whereby he would become surety for all her deeds prejudicial to the renunciation, though they were done after his death.

It was ANSWERED, That the clause of taking burden, being ordinary, ought to be inserted ; and, that the charger was willing that it should be declared, that it should import no more but the authorising my lady, as her husband.

The Lords ordained the clause to be thus expressed :—“ That my lady, who is fiar, should renounce and resign, with consent of my lord, as husband, authorising her ; and he, for himself, for any right he hath by the disposition or contract.

*Vol. II, Page 404.*

1676. *January 26.* SIR ROBERT DRUMMOND *against* LAWRIE of BLACKWOOD and GEORGE HAMILTON.

SIR Robert Drummond disposed his estate of Meidhope to Sir John Drummond for 33,000 merks, and assigned him to sums extending to 20,000 merks, redeemable in his own time only, and bearing this clause,—“ That if the right should become irredeemable, Sir John should be obliged to pay 3000 merks to any person Sir Robert, or his lady should leave the same to in legacy, the estate being freed of debts and burdens.” Sir Robert assigned this sum of 3000 merks to his lady, and she transfers the same to George Hamilton ; Sir John having given in several debts to affect the lands of Scotstoun, disposed by Sir Robert, to him, upon deathbed.

It was ALLEGED by Lawrie of Blackwood, who had adjudged the interest of Sir Robert's apparent heir, in the lands of Scotstoun, That Sir John behoved to deduce the 3000 merks which Sir Robert had power to legate ; and had exercised the faculty by this assignation.

It was ANSWERED for George Hamilton, That he had the only right to this 3000 merks ; for, albeit it be provided, That Sir Robert may leave it in legacy, which imports, that he may do it in testament, or on deathbed, yet, he is the fiar of the sum ; and might dispose of it by assignation, as he hath done. And as to the creditors, they neither have, nor can affect this sum, before it was transmitted from Sir Robert, by his assignation ; but seeing, Sir John, who hath right to all the debts, and had his option to insist against Sir Robert's estate, real or personal, but hath affected Scotstoun therewith, he cannot be forced to quarrel Sir Robert's assignation ; nor hath he any ground to quarrel the same ; Sir Robert's whole debts being satisfied otherwise, and he no bankrupt nor insolvent. And albeit the assignation were on deathbed, yet, by the conception of the clause, “ that it might have been by way of legacy,” it is sufficient : and the