

ments : And a notary, having given out an instrument that is defective, cannot thereafter give another to supply the defect ; otherwise the question being betwixt the creditors, who had done lawful diligence, and a donatar, it should be in the power of a notary to prefer and gratify either party as he should be prevailed with, either to give out, or not to give another instrument.

*Page 211.*

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1677. *January 12.*

INGLIS *against* LAWRIE.

SOME of the Lords were of the opinion, that a husband may give validly, during marriage, to his wife, a provision or jointure, where there is no contract of marriage ; but that the wife could not give to the husband, though there were not a contract of marriage ; and that she might revoke any such donation : which appears to be hard and unequal. But this point was not decided.

*Act. Colt. Alt. Dalrymple. Mr Thomas Hay, Clerk.*

*Page 211.*

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1677. *January 17.* ————— *against* —————.

AN edict of executry being advocated from the commissaries,—a bill was given in, desiring that the advocacion might be summarily discussed ; seeing both nearest of kin, creditors, and the fisk, were concerned that the testament should be confirmed and executed ; which desire the Lords thought could not be granted, in respect of the Act of Regulation : but it was thought a great escape and inadvertency that such advocacions should be passed, seeing the Lords could not confirm testaments : and if any party should be prejudged by any act of the commissaries, it may be reduced upon the head of iniquity. And the Lords thought it was fit that a new edict should be raised ; and, if an advocacion should be sought, the reason should be discussed upon the bill.

*Page 213.*

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1677. *January 25.*

KER *against* KERS.

A DISPOSITION being questioned, as being made *in lecto*, at least delivered then : It appeared by the deposition of one of the witnesses, used for proving the libel, —that the said writ was subscribed divers years before the disponer was on death-bed ;—and, that the same was delivered before death-bed to the said witness ; and, —that the defunct having called for it on death-bed, for drawing two other dispositions of the lands contained therein, one in favours of the pursuer, the disponer's heir, and the other in favours of a son of the disponer, who was father to the person in whose favours the disposition in question was made. And upon debate amongst the Lords, what should be the import of the said testimony ; seeing the depositar did not declare in what terms the same was given to him