

kept not his own house, and yet gave her no competency to live upon, &c. The Lords ordained him to be cited by a macer, and referred it to Castlehill to hear them, who agreed them together. *Advocates' MS. No. 550, § 4, folio 277.*

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1677. *February 24.* ———— *against JOHN LAW.*

JOHN LAW, goldsmith in Edinburgh, having arrested a country gentleman within Edinburgh, to find caution as law will, for the price of victual assigned to him; the Lords, upon a bill of complaint made to them, annulled the caution, because of the late act of Parliament in 1672, anent arrestments within burgh.

*Advocates' MS. No. 552, folio 278.*

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1677. *February.* REMARKS ON SUNDRY POINTS OF LAW.

I. HOME of Linthill suspended his minister of Eimouth, Mr Gilbert Innes's general letters, and offered him the worst victual, yea which grew on other lands he had, not lying within that parish. Certainly the Lords will not allow this, but ordain him to give neither the best nor worst. Some venture to give the lame to God, and what will not pay the master's farm shall pay the stipend.

II. I have heard that axiom of law, *Dispositio hominis facit cessare provisionem legis*, as in *testamentaria tutela et successio* preferred to the *legitima*, &c. called in question; for if it were not the will of the law that validated the man's disposition, it would not subsist; it would have no preference: so it is still *legis dispositio adjuvans et concomitans*, that gives it strength: and so *dispositio hominis non facit cessare dispositionem legis*, for the law could prohibit that act which it permits, and overrule it. Yea, in the case of usury, or renouncing the benefit of the acts against it, *pactio hominis non tollit legem*; nor in a husband ordaining his wife to continue tutrix to his bairns, *etiam si ad secundas convolaverit nuptias*, it will not be supported by law: then law predomines over paction, *et pactis privatorum nequit derogari juri publico. L. 39, D. de Pactis. Vide supra, numero 160, [July, 1671.]* Yet this is only a sophism, for though the law interposes, yet it is only remotely, *permittendo*; the immediate and near influencing cause is the will of the party, and so in many cases, *dispositio hominis facit cessare provisionem legis*. See for this rule, Cujace *ad tit. 30, libri 5, C. de Legitima Tutela; et legem 130 D. de Verborum Significatione, ibique Alciatus et Wissembach.*

III. The Sheriff's fiars are mainly set for this design, to regulate the prices of undelivered bolls by the tenant to their master, to make them liable in that price; yet some masters do, by act of Court, bind their tenants in payment of higher prices than the fiars, in case of failie of delivery, as 20s. more, *nomine pœnæ*. The Exchequer fiars are set for the King's vassals, who pay in their feu-duties to them as the King's Commissioners, and if it be within L.10, to the Sheriff, by the regulations