

*manu forti*, they have both the Lords of Treasury and the estate their debtors, conform to the Act of Convention in 1689.

The Lords found the Viscount's estate affectable with this debt. Some were for trying if it was applied to the use of the Highland army; in which case, being *in statu belli*, Clavers himself would have been free; but it was decided *ut supra*.  
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1696. December 8. ROBERT M'MILLAN *against* AGNES BINNY.

THE Lords advised the debate between Robert M'Millan, flesher, and Agnes Binny, relict of Andrew Nisbet, candlemaker in Edinburgh. The point was,—She founded on a disposition from her husband.

ALLEGED,—It was *omnium bonorum*, and on deathbed, and so cannot prejudice lawful creditors.

ANSWERED,—She made use of it only to fortify her contract of marriage.

REPLIED,—It bears no relation thereto, and expresses no other cause but love and favour.

DUPLIED,—That hinders not her founding upon it to connect it with an onerous antecedent cause; as was found, *26th January 1669, Lady Brae against Chisholm*.

The Lords thought it dangerous to creditors, if such latent general dispositions *in lecto* were sustained without confirmation; yet found it a colourable title to purge vitiosity. And it being put to the vote, Whether it should make her liable *in valorem*, or bring her in *pari passu* with the creditors, but would not give her a preference: and the bringing her in equally carried but by one vote; for sundry were clear to find her liable for her intromission *quoad valorem*; reserving her pursuit on her contract of marriage, as accords.

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1696. December 10. JOHN SANDILANDS of COUNTESSWELLS *against* MITCHELL, in Aberdeen, and ROLLAND of DISBLAIR.

CROCERIG reported John Sandilands of Countesswells, against Mitchell, in Aberdeen, and Rolland of Disblair, being a competition between a general and a special assignation to some back-bonds. The general is first intimated; but, wanting the papers when it was drawn, it does not condescend on the date or tenor of it, and bears only *a back-bond*, in the singular number; whereas there were more than one: and, in a pursuit of exhibition at his instance, Mitchell discovering this defect, he procured a special assignation. But the Lords looked on this as a trick, and preferred the general assignation.

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