

take him on his diligence, which they would not have refused ; and he having done it summarily at his own hand, they found it a contempt of their authority, and fined him in five dollars to the poor ; but ordained Lochdochart to depone upon Mr Duncan's act, and the messenger to detain him till he should appear before the Ordinary for parties' and witnesses' oaths ; seeing a protection is not designed to secure any against a fact prestable by himself, as deponing in a cause, or the like. *Vol. I. Page 742.*

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ANENT the REGISTER of HORNINGS.

1696. *December 12.*—GEORGE Robertson, keeper of the Register of Hornings, having deceased this last night, and some persons applying, by bill, to the Lords, to have their hornings and inhibitions marked and registrate ;—the Lords considered that the Earl of Selkirk, Clerk-register, (who had the filling of the vacancy,) was not in the kingdom, and that it could not admit of delay, or postpone the lieges' diligence ; therefore they nominated and appointed Alexander Gibson, one of their clerks, to mark and registrate all hornings, &c. till the place were filled, and another to officiate, he being countable to the register for the emoluments ; and, least any of the warrants or minute-books should miscarry, *medio tempore*, they sent two of their number, with a clerk, to the Horning-chamber, to secure and seal up the warrants, minute-books, and public records, and to have some of the defunct's nearest friends and relations present ; it being their interest, as well as the public's, that the same be not embezzled, but made forthcoming to the next successor in office. *Vol. I. Page 742.*

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1696. *December 15.* JAMES CLELAND, and other CREDITORS of BOYD of PINKILL, *against* BOYD of PINKILL'S RELICT.

JAMES Cleland, and other Creditors of Boyd of Pinkill, against the Lady, was reported. In July last there were 500 merks modified to her for an aliment during the dependence of the process of competition ; but the extracting being stopped by the creditors till this Session, it was now OBJECTED by the creditors, That the Lords, by the Act of Parliament in September last, are discharged to grant aliments except upon process, and after cognition taken.

ANSWERED,—The Act can have no influence nor retrospect to an aliment modified before, and that very deliberately done.

The Lords found the Act of Parliament did not reach this case, and decerned. *Vol. I. Page 742.*

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1696. *December 15.* ROBERT SANDERS of AULDHOUSE *against* BESSIE CORBET.

RANKEILOR reported Robert Sanders of Auldhouse against Bessie Corbet, his

father's relict, for refunding the price of sundry unbound books and others, disposed to him and intromitted with by her.

ALLEGED,—The disposition only gave him right to all the unbound books of his own printing that should be lying beside him at the time of his decease; *ita est*, most of them were either bound or sold before his decease: And, as to printing paper, that cannot fall under the disposition, which only mentions the materials for printing, such as presses, &c.

ANSWERED,—She must be still liable, because of her fraudulent precipitation in causing sell off the greatest part of the unbound books *per aversionem*, and binding the rest, of purpose to frustrate and evacuate the design of his father's disposition; *et dolus nemini debet prodesse*: And the Lords, in like cases, have often repudiated it; as, where molosses were disposed, that should be in such a sugar-manufactory at the time of one's decease, he cannot, *in lecto*, reboil them to defraud the other's right: and, in the late *Viscount of Oxford's* case, who bought lands on his death-bed with a sum of money, then lying beside him, to prevent his Lady's having a third of it, the Lords thought this was premeditated; and the tutors were forced to compone it. See *January 1679, Grant against Grant*, where such a disposition did not prejudice the relict's part of the moveables. And as to the printing paper, it is certainly a material, and falls under that general denomination.

The Lords found, Any selling or binding of books at and about the time of his sickness, more than what he was in use to do before, was nimious diligence, and could not be sustained against the pursuer's disposition; and allowed a trial to be taken *de more solito patrisfamilias* in his own time; and found, That *charta bibula*, which is fit for no other use but printing, falls under the appellation of materials, and so is contained in his disposition; and that the ballads likewise belonged to him, they being unbound books *in suo genere*, and which use not to be bound.

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1696. December 15. LORD SALTON against SIR PATRICK OGILVIE of BOYNE.

RANKEILOR reported a case between the Lord Salton and Sir Patrick Ogilvie of Boyne, being a declarator of trust, that any right my Lord Boyne had to the lands of Pittowlzie and Pittendrum from the Lord Salton's father and grandfather, were only securities for cautionaries and sums of money owing him. Boyne contended they were irredeemable. One of the grounds to enforce the trust was, That the price was to this hour standing blank in the disposition he produced; *et nulla est emptio sine prætio, et tunc tandem contrahitur venditio cum de prætio convenerit*,---sect. 1, *Instit. de Empt. et Vendit.*

ANSWERED,—The price may be conferred *in arbitrium tertii*; and it is cleared here by a back-bond.

REPLIED,—That back-bond was never accepted, and contained nothing that was near to an adequate price; and it is unsuitable that the price should be conferred *in arbitrium emptoris*.

There being sundry other grounds to adminiculate a trust, the Lords resolved to hear it in their own presence.

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