Lord Saline and his Children, (mentioned 19th February 1695.) As the Lords had formerly found there was no need for the pursuers to serve heirs, *ad inchoandam litem;* so they now insisting against the defenders to denude of the *fidecommiss.* in their persons, they found, that their being potestative heirs *designativè* was enough without a retour, it being provided to them *qua* bairns and children; though, in another part, it provided the sum to the heirs procreated of the marriage. But *heir served* are legal terms, and come not by procreation,—none being born with a retour in his hand. *Vol. I. Page* 710.

February 22.—On the occasion of a cause depending betwixt my Lord Saline and Shorts, in Stirling, it was moved, If Saline ought to stand covered at the bar, having once been a Lord of the Session, and so retaining the privileges, *per tit. D. et C. de Senator.;* and it was always allowed them, as to Abbotshall and others. Polwart, and some with him, argued, That a Lord's eldest son stood there bare, and yet he would take the place of an outed Lord of the Session; and that those in possession ought to have the precedency of those who were out of it.

The Lords declared they would allow it to none but the nobility, the present Lords of State, and such Lords of the Session as were actually in office at the time. Which resolve gave offence to severals; for, though they acknowledged that the King, and not the Lords, could confer honours, yet, they being in possession, it could not be taken from them but by a declarator; and to make an act of sederunt on it was to deprive and condemn them without hearing.

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December 17.—The Lords advised the mutual declarators between the Children of Alexander Short, in Stirling, and Sir Andrew Birny, Lord Saline, mentioned 12th February 1696. The children ALLEGED,—The rights in his person were but a trust, and craved he might denude, he and his children being allenarly constituted fidecommissaries by Mary Scot, in her disposition, in the event of Sir Alexander Short's having children, to whom they were bound to restore the houses, lands, and sums. Saline, on the contrary, insisted on his declarator of property, that the same were no trust, but properly his own. There were many adminicles advanced on both sides; as a back-bond under Saline's hand in 1673, which he contended was renounced and discharged by Alexander Short in 1679.

The Lords found,—Alexander could only renounce and discharge his own part, but not the provisions and clauses conceived in favours of his children; and found even that ratification itself bore its dittay in its bosom; for it reserved the children's right, and declared it should be but prejudice thereof.

Saline ALLEGED,—This reservation did not impede him, why he might not make use of the debts and adjudications in his own person, to exclude. But the Lords considered, that, by the *salvo* adjected, he had reserved their rights, yet he had not reserved to himself a power and faculty to quarrel them; and, therefore, declared the trust to this effect, that he could not impugn Short's children's right by any right standing in his person. *Vid. supra, 22d June* 1678, *Birny* against *Polmais and Brown,* where *Saline* founds on *Mary Scot's* disposition, which he now seeks to evacuate by the rights in his own person.

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