ing with the non-delivery, or renouncing all power to alter; in which cases they would not fall under this revocation; and the parties must not be made judges of the nature of tailyies, or the import and meaning of clauses, else an apparent heir may be cut out of all inspection *ad deliberandum.*

The Lords, on the one hand, thought it unreasonable to expose charter-chests to view, where such a document as a revocation indicated the alteration of the tailyier's mind; and, on the other hand, it was as dangerous to let parties judge on dubious and ambiguous clauses: therefore they took a middle way, ordaining the defenders to produce all tailyies lying beside the defunct, upon oath, and the Reporter to peruse the same; and, if he finds they do not fall under the revocation, or may be debateable, then he is to allow the pursuer inspection thereof, and to hear them how far the same are revoked.

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1697. *July* 15. CHRISTIAN SALTON *against* ANDREW CRAWFURD.

HALCRAIG reported Christian Salton, in Lithgow, against Andrew Crawfurd, to denude of the right of an assignation of a 500 merk bond made to him, that he might include it in an adjudication he was leading against the common debtor's lands for sums owing to himself.

ALLEGED,—The fee of this sum belongs to your brother Harry, who is abroad, and from whom you have no right; and though you be liferenter, yet you have no interest, either to lift the sum, or to crave me to denude of the trust, but only to claim the annualrent during your lifetime.

ANSWERED,—A liferentrix is always allowed the *jus exigendi* of the debt, upon finding caution to make it forthcoming to the fiar when the liferent expires; as appears *per L. L.* 3. *et* 5. *sec.* 1. *D. de Usufruct. ear. rer. quæ usu consum.* And, on the 15th of February 1684, between Sir Robert Milne and the Lord Harcourse, about Ludquharn's estate, the Lords found the relict had not only right to uplift, but that an apprising led by her for the stock subsisted as a valid right, even against a singular successor. And the defender's design here is only to retain the money in his hand on the pretence the fiar is still alive, *et præsumitur vivere usque ad centum annos,* being abroad, and unknown whether alive or dead; therefore she, as *curator bonis data,* is willing to find caution.

REPLIED,—Liferenters have never the power of uplifting but where the debtor is *vergens ad inopiam*; but here he is abundantly responsal and solvent, and so there is no necessity of recurring to that extraordinary remedy.

The Lords found he ought either to denude or pay; the pursuer finding caution to secure it for the fiar's use, and to reëmploy it in these terms, at the sight of the Lord Reporter.

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1697. *July* 16. MAXWELL of MUNSCHES *against* MAXWELL of BARNBACHEL.

PHILIPHAUGH reported Maxwell of Munsches against Maxwell of Barnbachel. It was a reduction of a decreet on this nullity,—that I am decerned, on the pas-

sive title, as lawfully charged to enter heir, and yet the decreet does not bear the production of any general charge or executions thereof.

ANSWERED,—You took a day to produce a renunciation to enter heir, (which acknowledged the charge,) and suffered the term to be circumduced against you for not doing it; and so cannot object this nullity now, you having acquiesced.

REPLIED,—The offering a renunciation appears now to have been a mistake; for, if I had known there was no general charge, I would never have taken a day to renounce; and it is as essential a nullity as if one pursued on a bond and the same were not produced; as was found lately betwixt Mr David French and David Dewar.

The Lords here refused to repone against this decreet; and found it abundantly supplied by their offering a renunciation; especially seeing the charge and executions are now produced to fortify the decreet.

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1697. *June* 29 *and July* 16. The EARL of NORTHESK *against* JOHN CARNEGY of KINFAUNS and LADY KINFAUNS.

June 29.—THE Lady Kinfauns and John Carnegy, her son, pursue for an aliment during the dependence of the process between the Earl of Northesk and them. The Lords considering her tocher was £20,000, and that her jointure is 2500 merks yearly, they modified 1400 merks to herself, and 600 merks to her son; which 600 merks they allocated upon Blair, *alias* Carnegy of Kinfauns, the son of the first marriage. He reclaims by bill, that he having no benefit by his father, (but succeeding to his mother, who was heiress of Kinfauns,) none of the funds could be laid on him.

ANSWERED,—Their father brought in 40,000 merks of patrimony into the family of Kinfauns, with which he relieved that estate of so much debt, and had power by his contract to burden it with 20,000 merks; and which he has accordingly done, by leaving to his son of the second marriage £5000 sterling, and providing him to that portion.

REPLIED,---A faculty not specifically exerced expires and dies with the person; and this provision to the second son has no relation to that reserved power, nor is it *in terminis* applied, not being done by infeftment.

DUPLIED,---No law requires a precise application to the reserved power, but any contracting of debt is a sufficient exercise of the faculty; and, though it be personal, yet any creditor may legally affect it, and thereby transmit and perpetuate it.

The Lords were clear such faculties did not require a specific implement, but that contracting of debt exhausted the same: yet, that they might proceed on the distinctest grounds, they ordained both contracts to be produced, the first containing the faculty, and the second the alleged exercise of it.

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July 16.---The Lords advised the debate between the Earl of Northesk and John Carnegy, son to Kinfauns, about the right to a blank translation of a bond of 9000 merks, found lying beside Kinfauns at the time of his decease. Northesk adduced many adminicles and presumptions to convince the Lords that it