

these bonds ; at least inventoried, and declared paid out of the principal debtor's effects.

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1708. *December 7.* JAMES COLQUHOUN *against* JOHN WHITE.

JANET Colquhoun in Paisly, an old widow, having lain bedfast several months before her death ; John White, chirurgeon apothecary there, being her door-neighbour, his wife and daughter attended her during her sickness, night and day, time about : of which care she being sensible, she gave some of her body-clothes and plenishing, by way of gratitude and remuneration, to John's wife and daughter, having no child of her own. James Colquhoun, being her nearest of kin, confirms himself executor, and pursues the said John White, with his wife and daughter, before the Commissary of Glasgow, for delivery of the defunct's goods intromitted with by them, or 500 merks as their value ; and refers the intromission to their oath, who depon in this manner :—The father, that he saw some chairs in his house which he knew were not bought by him, and asking his wife and daughter, he was told they were given by Janet Colquhoun, for their pains in waiting on her ; and the mother and daughter acknowledged a great many other particulars, but added that they were gifted by the defunct. The Commissary found, That, without a written testament, she might only legate to the value of £100 Scots ; for so far has a nuncupative testament been sustained in our law ; but, in so far as exceeded that sum, the Commissary discerned them to restore *ipsa corpora*, or else 500 merks, as the price thereof.

They suspended on thir reasons,—That, for the husband himself, he had no intromission, and that his wife could not depon to fix any debt upon him : and, for his daughter, she had deponed that the inconsiderable goods she had were truly gifted to her ; and that the Commissary had committed iniquity in finding that quality extrinsic, and putting her to prove it : besides, he caused no appretiation to be put upon the goods, and so put a random value on them.

The Lords found, The rings, and other goods, delivered by the defunct out of her own hand, while she was alive, were unquestionably hers, as also what tokens she had left to others ; which they had accordingly delivered conform to the defunct's will. And that it was not enough to assoilyie the father, that he only saw the goods in his house, seeing the daughter was *in familia* with him, and he was answerable for what she received. And though his wife could not swear a debt against him, she was bound to depon as to goods brought into his house ; yet, in regard he found the quality of gifting extrinsic, and had not proven the value of the moveables, therefore they turned his decret into a libel, and reponed them to their defences : for the husband did not object against his wife's deponing, but suffered her to go on ; and so cannot now recur, being then competent and omitted. See *9th February 1672, Wood against Robertson ; and 5th February 1669, Deans against Bothwell.*

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