

and favour, and out of mere pity and commiseration. And, seeing he founds upon it, he clearly homologates and acknowledges the disposition : and his pretence, that he only mentions it to demonstrate he had not paid an adequate price before, is captious and impertinent ; for, if he repudiate the same, he can found no argument on it.

As to his reasons of reduction, ANSWERED to the *first*, anent the trust,—That there can be nothing more false and calumnious ; for now, by the Act of Parliament 1696, no trust can be proven but *scripto vel juramento* ; and let him choose any of the two he pleases. And, as to the *second*, against the onerous adequate cause ; he oppones both the disposition and ratification, wherein he has acknowledged the same ; and what can law require more than that ? As for the pretended interdiction, it is published *in anno* 1675, and Ferguson of Craigdarroch, who lived last of all the interdictors, died in 1685, now twenty-five years ago ; so to trump up an interdiction, after it has been so long dead and buried, is a downright mockery.

The Lords found no ground for modifying any aliment in this case ; but prejudice to Gilbert to insist for his liferent-bond of pension, as accords.

*Vol. II. Page 584.*

1710. *July 11.* ————— *against* CARNEGIE.

A QUERY was made to the Lords on this ground :—In a process against Carnegie of Finhaven's eldest son, a point was referred to his oath. It was suggested, that, by a palsy, he had been these many years bygone struck dumb ; but it had affected neither his judgment nor hearing, so as he wrote his mind on any subject most judiciously ; and though he was deprived of the use of his tongue, whether he might not be allowed, after he was sworn, to set down his oath in writing. And the Lords found, in this extraordinary case, he might ; and that it fell not under the Act of Sederunt, discharging the giving of oaths in writ.

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1710. *July 12.* HELEN HUNTER and PATRICK JOHNSTON *against* SIR THOMAS MONCRIEFF of that ilk.

HUNTER and Johnston against Sir Thomas Moncrieff. By contract of marriage in 1661, betwixt the said Sir Thomas and Bethia Hamilton, she is provided to the liferent of 28,000 merks of principal sum, and, in case of no children, to the half of the conquest ; and thir provisions are declared to be but prejudice to her of the half of the moveables. She being the first deceaser, without any children, Helen Hunter, her niece, and nearest of kin, confirms herself executor to her, and, with concurrence of Patrick Johnston, her husband, pursues Sir Thomas Moncrieff of that ilk, for the half of the moveables, debts, and sums of money he had at the time of his first lady's death, extending to a great sum, as falling under her aunt's communion of goods, by the reservation in her contract