1710. *February* 8. BARBARA FEA, Spouse to PATRICK TRAIL, younger of Elness, *against* JOHN TRAIL of Elness, her Husband's Father.

IN the action of aliment, at the instance of Barbara Fea, against John Trail, her father-in-law, wherein Patrick Trail, the pursuer's husband, who had deserted her and gone abroad, was also called;—

ALLEGED for the defender,—Albeit he might be liable *jure naturæ* to aliment his son, no law obligeth a father to aliment his son's wife, separately from her husband, but she ought to follow, and reside with him.

ANSWERED for the pursuer,—Law obligeth parents to aliment their children, and grand-children, and much more a son's wife; who is *una et eadem persona* with her husband, and upon that score was subjected by the civil law to the power of the husband's father, and reckoned a member of his family. 2. As there is a legal tie upon the defender to maintain his son and his family, he is *subsidiarie* liable, in absence of his son, to aliment his wife, which is a less charge: especially considering that it was through the defender's instigation that the pursuer's husband unjustly deserted her, without any fault on her part; as appeared from a letter written by the defender, to his son at London, wherein he threatened to disown him, if he came in her company, or anywise owned her as his wife.

The Lords found, that, albeit a father is not bound to aliment his son's wife separately from her husband, yet it is relevant to make John Trail liable, by way of damage, to aliment the pursuer, that in a letter to his son, he threatened to disown him, if he owned her.

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1710. *February* 17. SUSANNA MARSHAL, only child of the deceased GEORGE MARSHAL, Merchant in Edinburgh, his second marriage, *against* GEORGE and HELEN MARSHALS, children of the first marriage, and Mr. ALEXANDER FARQUHARSON, Writer to the Signet, HELEN'S Husband, for his interest.

IN a competition betwixt Susanna Marshal, who had adjudged for the provision in her mother's contract of marriage, dated January 3, 1690, and George and Helen Marshals; who had adjudged upon bonds of provision, granted to them in April, 1703, by their father, who made no contract of marriage with their mother: the children of the first marriage claimed to be preferred, at least to come in *pari passu* with Susanna Marshal: because they were creditors by the bond of provision; and her interest was but a naked destination, in her mother's contract; whereby she was heir of provision to the father, and liable to fulfil his deeds, and pay his debts *subsidiarie*, after discussing the heir of line. At least the children of the first marriage, were equally creditors by their bonds, as Susanna by the contract; both being granted in consequence of the natural tie upon parents to provide for their children.

ANSWERED for Susanna Marshal,—The father could not evacuate the provision in her mother's contract of marriage, by granting *ex post facto* gratuitous bonds to the children of the first marriage; which he was under no civil obligation to grant, by contract with their mother; and the heir of a marriage may quarrel such gratuitous deeds, *Stair, Instit. Lib. 3. Tit. 3. §. 19.*

REPLIED for George and Helen Marshals,—Though a father cannot, in prejudice of a provision in his contract of marriage, do fraudulent or merely gratuitous deeds: he being fiar, is not tied up from rational deeds, for just and necessary causes; which is clear from the author of *Les loix civiles*, in the preface to that part of his treatise concerning succession, N. 10; the decision betwixt *Anderson* and *Bruce, December* 1, *and* 21, 1680; and seems to be also my Lord Stair's opinion, in the place cited. Now, a bond of provision, by a father to a child, cannot be considered as a fraudulent gratuitous deed; since the law of nature obligeth men to provide their children.

The Lords admitted the children of both marriages to come in *pari passu pro rata*, according to their respective provisions in the bonds and contract.

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1710. *June* 23. JOHN GRANT of Auchriachan, *against* the DUKE of GORDON.

JOHN GRANT raised reduction of a bond granted by Robert Grant in Tombreck, his father, in April, 1686, to the Duke of Gordon, for 2000 merks of principal, with annual-rent and penalty; and of a bond of corroboration thereof granted by himself, in November, 1705, after his father's decease; upon this reason, that the original bond, granted by Robert Grant, was for no onerous cause; and not to be paid, providing the granter behaved himself dutifully to his Grace, while he continued his tenant, and should never militate against his heirs, in case he happened to die before any action intented thereon: which was offered to be proved by the Duke's back-bond, in the hands of Gordon of Glastirum; for recovering whereof, the pursuer craved a term and diligence. He pleaded, that his father having never misbehaved towards his Grace, nor been sued in his lifetime, the original bond was void and null: and the bond of corroboration, granted *errore facti alieni*, behoved to fall in consequence; seeing *ubi principalis causa non subsistit, nec ea quæ sequuntur, locum habent.*

ANSWERED for the defender,—1. The pursuer cannot have a term assigned for recovering the back bond; which, being his own evident, he ought to have produced *in initio litis.* 2. *Esto* such a back-bond were produced, the pursuer could found nothing thereon; since his granting the bond of corroboration imported that he renounced all exceptions against the debt, passed from the back-bond, and acquiesced in the alleged miscarriage of his father.

REPLIED for the pursuer,—1. He must needs have a diligence for recovering the back-bond, since he condescends upon the haver, who will not part with it till he be compelled. 2. Though the pursuer, by granting the bond of corroboration, might be understood to have renounced, and past from objections against