

THE LORD ORDINARY (20th December) found the defender liable for the bill libelled on, reserving to him to establish his claim of compensation by a separate action.

No 57.

And a petition, craving a proof of the counter claims *hoc statu*, was (31st January 1800) refused without answers.

Lord Ordinary, *Craig.* Act. *Jeffrey.* Alt. *Hay, Gillies* Clerk, *Sinclair.*  
D. D. Fac. Col. No 136. p. 308.

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S E C T. VII.

Where the adjected quality is not relevant.

1611. June 15. LAIRD OF TORSONS *against* PRINGLE.

A MATTER being referred to the party's oath, and he by his declaration affirming that which is offered to be proved, and therewithal adjecting conditions destructive of the allegiance, such as a clause irritant in case of failzie, and that the failzie is committed, the allegiance will be found proved, reserving to him his action for declarator of the failzie or contravening the conditions.

No 58.

*Fol. Dic. v. 2. p. 301. Haddington, MS. No 2217.*

1714. July 16.

JOHN CARSE, Writer in Edinburgh, *against* Sir JOHN KENNEDY of Colzean.

JOHN CARSE, as assignee by Dame Jean Kennedy, and Sir Gilbert Kennedy of Girvanmains, her husband, pursued an exhibition against the deceased Sir Archibald Kennedy of Colzean, for exhibiting and delivering a contract of marriage, past betwixt the said Sir Archibald, father of the said Dame Jean Kennedy, and Mrs Elizabeth Lesly, her mother, wherein, among other things, Sir Archibald bound him and his heirs to pay to the daughters of the marriage, at the term, and with annual rent and penalty, as was more fully contained in the libel, the sum of L. 2,000 Sterling equally among them; and subsumed, that the said Dame Jean Kennedy, being one of the four daughters, had right to a fourth part of the said sums; and concluded, that the contract being exhibited, the said Sir Archibald ought to be decerned to pay the said

No 59.

A father deponed in an exhibition, that he had cancelled a bond of provision to his child, because he had executed it in minority without consent of his curators. The minority and want of consent found extrinsic.