

No 37.

vivere, unless they offer to prove dead.—THE LORDS sustained the procuratory as sufficient to carry on Ragg's service.

Fol. Dic. v. 2. p. 23. Fountainhall, v. 2. p. 453, & 459.

* * Forbes's report of this case is No 23. p. 5260. *voce* HEIR APPARENT.

No 38.

1746. July 9. WRIGHT and RITCHIE against MURRAY.

THE liferent of a subject being left to a woman, with a power to her of disposing of the subject, at her death, to any of certain persons named, she desired one of the nominees to get a disposition drawn in his own favour; but stipulated, that her husband should have the liferent. The nominee agreed with the husband to give him a certain sum in lieu of the liferent, and took the disposition simply to himself. A reduction of the disposition being brought by the other nominees *contra bonos mores*, the LORDS repelled the reason of reduction.

Fol. Dic. v. 4. p. 30. D. Falconer.

* * This case is No 50. p. 4952. *voce* FRAUD.

S E C T. VIII.

Contravention of a deed by collusion of the depository.

No 39.

Found that the depository of a bond, could not propose compensation, upon a bond for aliment, which, while in the knowledge of the debt in the bond entrusted to him, he had taken in contravention of it.

1724. January 28.

ELIZABETH LAUDER against KATHARINE BROWN, and her Husband.

THE Representatives of William Brown were pursued by Elizabeth Lauder, as executrix confirmed *qua* nearest of kin to Mary Seton, for payment of a bond for 500 merks, granted by William to the said Mary, dated 23d. of March 1706.

In this bond it was expressly provided, 'That the said Mary Seton should not have it in her power to uplift or assign the foresaid sum, or to contract debt, or do any other fact or deed that might affect the same, without consent of David Forrest and William Lauder,' &c. And for Mary Seton's further security, the bond was deposited in the hands of the said David Forrest.

The defence proponed was compensation, founded on a bond for L. 450 Scots, granted by Mary Seton to the said Forrest, and by him assigned to the

defenders; which bond bore in its narrative to be for aliment furnished to the said Mary Seton by Forrest and his mother, for several years preceding 1691.

It was *answered* for the pursuer, That since Forrest was in the knowledge of the qualities in Brown's bond, and was entrusted with it for Seton's behoof, neither did he pretend any claim of aliment at the time of granting it, the compensing bond was an undue imposition on Mary Seton, and could not be regarded.

THE LORDS found, that the bond bearing the qualities therein mentioned, the depository could not take a bond in contravention thereof for aliment preceding the bond.

Reporter, Lord Cullen.

Act. Ja. Boswell.

Alt. Ad. Watt.

Clerk, Gibson.

Fol. Dic. v. 4. p. 24. Edgar, p. 9.

No 39.

SECT. IX.

Members of the College of Justice buying pleas.—*Pactum de quota litis.*

COLT *against* CUNNINGHAM.

AN advocate may buy land, although the matter be depending by process, notwithstanding of the act of Parliament upon that subject; because, by the act, it is found, that the contravener hereof shall tyne his office and privilege, but not his action. (See act 220. Parl. 14. James VI. 1594.)

Fol. Dic. v. 2. p. 24. MS. Cases at the end of Pitmedden's copy of Colvil.

No 40.

1611. June 5. CUNNINGHAM *against* MAXWELL.

AN advocate having bought land to be holden of the King, and perceiving a cause of reduction of a comprising of the said land, will not be excluded from his action, upon allegiance upon the act of Parliament, that it is not leisom to Advocates, or Members of Session, to buy lands depending in plea, and, if they do the contrary, they shall tyne their place, office, and privilege; but their actions will proceed, but prejudice to any party having interest to seek his deprivation, according to the act of Parliament.

Fol. Dic. v. 2. p. 24. Haddington, MS. No 2196.

No 41.
Found in conformity with the above.