

estate is sold, and so the landlord is changed, or only in the case of the removal of the tenant, according to the words of the Act.

The Lords found, that, this being a correctory statute, the words of it could not be extended. Dissent. Arniston.

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1789. June 19. ARCHIBALD THOMSON *against* HARRY HILL, &c.

[C. Home, No. 119.]

THIS was a process at the instance of the Kirk-session of ——— against two of their elders, who had joined Ebenezer Askine, in order to oblige them to give up into their box some money which they had collected at Ebenezer's meetings, and which they pretended to dispose of.

The Lords assoilyied from the pursuit, on account of the manifest will of the contributors. *Iterum* Dissent. Arniston. In this question, two or three of the Lords declared it to be their opinion, that the elders, in conjunction with the heritors, had the disposal of the charities of the parish, not the elders alone.

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1789. June 23. FERGUSON *against* M'GEORGE.

[Elch., No. 5, *Fiar* ; Kilk. No. 1, *ibid.*]

This was the case of a bond taken to a man and his wife, the longest liver of them two, and their heirs. The wife survives, and, by virtue of this destination, claims the fee of the sum contained in the bond. On the other side, the husband's heirs pretend it belongs to them. The Lords were considerably divided about this question. Some were of opinion, that the husband was sole *fiar* and the wife only *liferenter*, in the same manner as in lands or heritable bonds ; see Stair, *Title Liferent Infeft.* 1. 10 ; and this opinion was supported by the authority of Craig and Nisbet. Arniston was of opinion, that, by the import of the words, the husband and wife were conjunct *fiars*, each for the half ; that the longest liver was sole *liferenter* ; the heirs of the marriage, heirs of provision to both ; and in case of no heirs of the marriage, the husband's heir had one half, and the wife's heirs the other.

The President and the majority found, that, in respect of the conception of the clause, and the presumed intention of parties, the survivor was sole *fiar*. There were two circumstances in this case, which, perhaps, might have had some influence, *1mo*, The bond was writ by no man of skill ; *2do*, There were some presumptions that the money in the bond came by the wife. July 8th,

Refused a reclaiming bill, desiring that the sum might be divided betwixt the man and woman's heirs, and gave it solely to the survivor's heirs.

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1739. *June 23.* ROBERT GORDON *against* CREDITORS of BROUGHTON.

[Elch., No. 2, *Personal and Real*; Kilk. No. 2, *ibidem*; C. Home, No. 120; *Rem. Dec.* No. 10.]

THE case was this.—A father disposed his estate to his son, and burthened the resignation with his hails debts, contained in a particular list subscribed by both, and ordained that this burthen should be insert in the infestment following thereon; which was accordingly done. The list referred to was registered in the register of the Council and Session, but was not inserted either in the disposition or infestments following thereon. *Quere*, Were these debts real debts?

The Lords found, unanimously, that they were not; but they differed as to the *ratio decidendi*. Arniston thought that the words in the disposition did not imply a real burthen upon the estate, but only imposed a personal obligation upon the disponee; that the father could never mean to make his debts real which were before personal, but only to bind his son, who had got his estate, to relieve him of his debts.—And it was upon this he founded the decision. But the rest of the Lords were of opinion, that the words, in themselves, did impose a real burthen, but that, in this case, as the debts were not inserted in the disposition or sasine, nor the list referred to registered in the register of sasines, therefore there was no real burthen; because, if it were otherwise, the lands would, in some measure, be excoemed from commerce, and the records rendered useless as to them, because it would be impossible to discover from them what burthens affected the lands; so that no purchaser could safely buy them, nor creditor lend upon the faith of them.

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1739. *June 26.* JOHN NEIL *against* SHERIFF of PERTH and PROCURATOR-FISCAL.

[Elch., No. 5, *Wrongous Imprisonment*.]

THE fact was this: There was a *fama clamosa* against this John Neil, as being accessory to burning a minister's house. Two or three people had informed the Sheriff of this, but had refused to sign their information, because, as they said, they were afraid of this John Neil and Kairnmuir, who was suspected to have instigated him to burn the manse. Upon this refusal, the Sheriff ordered his procurator-fiscal to sign an information against John Neil; and, in consequence of this information, he gave a warrant, and apprehended him. He was kept in prison a considerable time, and transported from the prison of