

tion of 5000 merks in favours of certain friends, and he died a few days after. His sister confirmed some few moveables he had in this country, and Bell became cautioner in the confirmation. The relict recovered decret in absence against the executrix, and then insisted against Bell the cautioner, who alleged, that this being a settlement in contemplation of marriage, became void by the dissolution of the marriage within year and day. Answered, It was no contract of marriage, but a donation *mortis causa*, being then on death-bed, and given over by his physicians, and he died in a few days, and it contains a clause dispensing with the not delivery, and it was not delivered. It was revocable and alterable, and not a marriage settlement; and 2dly, Though it were, yet parties contractors can dispense with the year and day, and that must be presumed to have been his meaning; since he knew he could not live a month instead of seven months. Minto reduced the bond because of the dissolution of the marriage within year and day. And this day we Adhered, *sed renit.* President, Drummore, Minto, &c. I was for the interlocutor, because the bond was plainly in contemplation of the marriage, without the least insinuation of his present sickness, or that the apprehension of death was the *causa donandi*; on the contrary he provides the fee to children one or more to be procreated; and though it proved eventually that he was on death-bed, yet there was no appearance that he knew or supposed it at the time. And on a reclaiming bill and answers we adhered, 16th July 1751, though the petitioner offered to prove that the physicians had given him over, and that he thought himself dying.

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NEAREST OF KIN.

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No. 1. 1744, Nov. 27. CREDITORS OF MR HUGH MURRAY *against*  
HIS RELICT.

See Note of No. 15, *voce* EXECUTOR.

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NEGOTIORUM GESTOR.

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No. 1. 1736, Jan. 27. HEIRS OF MURDIESTON *against* MRS LOCKHART.

THE question was, whether total relief was competent against any of the representatives of Murdieston, or only partial? It carried total. Some of us voted total against Alexander, but only partial against the heir of line, William, which was counted as total. Thereafter the vote was stated, Whether the heir of line is liable *in solidum* in relief?—and it carried in the affirmative.