

granter's descendants as should happen to be in want, or stand in need thereof; and that at the discretion of the trustees; *3tio*, Failing descendants, the capital is to return to her nearest heirs. This deed being whimsical and irrational, the trustees refused to accept. A process for reducing the settlement was brought by the heir at law, in which were called all the descendants in being of Dame Janet Dick. None of them made opposition but Mrs Fergusson for herself and children. Several grounds of reduction were insisted on, chiefly the non-acceptance of the trustees. And it was *urged*, That the present event is a *casus incogitatus*, for which there is no provision made in the settlement. The deed is at an end by the common law; for it supposes the acceptance of the trustees, and there are no means prescribed to carry it on independent of them. The matter then resolves into this, Whether this Court, as a court of equity, ought to supply the defect? The answer to this question is obvious. Seeing the settlement has fallen at common law, and that the subjects contained in the settlement belong to the nearest heirs, it never can be equitable to deprive them of their right; especially to support a whimsical intention in favour of remote descendants, who possibly may never be in want, and never have occasion for the money.

*2do*, The defender has no proper interest to oppose this reduction. The settlement leaves the distribution entirely upon the discretion of the trustees; and, therefore, suppose the trustees had accepted, no descendant of Dame Janet Dick could have a claim in law for any sum out of the trust-subject. If so, they cannot, by the repudiation of the trustees, qualify any loss or lesion that can be regarded in a court of justice.

' THE LORDS found the deed ineffectual by the non-acceptance of the trustees.' See TRUST.

*Fol. Dic. v. 3. p. 349. Sel. Dec. No 143. p. 199.*

1761. July 25.

WILLIAM WALKER, Town-clerk of Inverkeithing, Supplicant.

THE election of Magistrates for the burgh of Inverkeithing made at Michaelmas 1760, being set aside by a sentence of the Court of Session for bribery and corruption, an application was made to the Court by the town-clerk of the burgh, setting forth, That by the want of Magistrates, those interested in burghage tenements were deprived of the ordinary means to complete their titles, or to alien; and therefore praying a warrant and commission to David Rankine and James Young, who were Bailies for the year preceding Michaelmas 1760, to execute the office of Bailies as far as concerns the receiving resignations and the giving infestments held burghage, until Bailies be regularly established; and

No 168.

It is a privilege of the Court of Session, where an election of Magistrates is voided, to name persons to supply the want of the office bearers.

No 168.

to authorise the common clerk of the burgh to be notary to such resignations and infeftments.

In support of this application, instances were given of persons authorised by the Court to officiate as commissaries *pro tempore* during the vacancy of the office. The election of Magistrates and Councillors for the city of Edinburgh, at Michaelmas 1745, having been obstructed by the rebellion, the Court, *anno* 1746, granted commission to the persons who had been Bailies the year preceding to receive resignations and grant infeftments of burgage tenements. And the double election of the burgh of Linlithgow being reduced, the Court, December 1755, granted warrant and commission to those who had been Bailies the year preceding, ' for receiving resignations and giving infeftments of burgage tenements, until Bailies be regularly established ; and authorised the common clerk of the burgh to be notary to all such deeds ; and ordained instruments of sasine to be recorded, either in his prothocal, or in the register of sasines within the burgh ; and allowed the warrant to be extracted without abiding the course of the minute-book.'

The desire of the present petition was granted in the same terms.

*Sel. Dec. No 184. p. 249.*

\* \* \* See No 155. p. 7435. and the three cases which follow it.

No 169.

A man was authorised by the Court of Session to change his name, in order to succeed to an estate.

1764. *January 20.*

JOHN MUIR, Supplicant.

AN estate being disposed to John Muir writer to the signet, upon this condition, That he assume and use the surname of *Chalmer* in all time after, he applied by petition to the Court of Session, setting forth, that being a clerk to the signet, an agent in the Court of Session, and a notary-public, he could not alter his subscription without their Lordships special authority ; and, therefore, praying their authority to that end.

' THE LORDS allowed and authorised the petitioner to change his name, and to act under the name of *Chalmer* in the several capacities above mentioned.'

*Sel. Dec. No 212. p. 278.*

1765. *August 9.*MERCHANT COMPANY and TRADES of EDINBURGH *against* MAGISTRATES.

No 170.

The Founder of an Hospital appointed certain official persons to interpret the regulations he had

GEORGE HERIOT, founder of the hospital of that name in Edinburgh, having, by his will, given power to Walter Balcanqual, Dean of Rochester, to establish statutes for the administration of the hospital, ordained, *inter alia*, ' That the Chancellor, the two Archbishops, the Lord President of the College of Justice, his Majesty's Advocate for the time being, shall have full power to interpret the same, and to determine all controversies arising about the interpretation ;