

per import: That there is no necessity, here, of departing from the general meaning of the word *heir*: That, by *heir*, in the marriage-contract, the heir of the marriage, properly so called, was understood; and by *bairns*, the younger children; and that the destination therein did, according to the nature of the subjects, and the rules of law, provide that the heritage should go to the heir of the marriage, who is Walter Lamond, and the moveables to the younger children of the marriage; not, as the pursuer contends, that the heritage should be divided between the only son and heir of the marriage, and one of four daughters who is not forisfamiated."

But, on the 17th July 1776, "The Lords found that, by the conception of the contract of marriage, the provisions therein stipulated are in favour of the whole children; but found that there remained in the father a power of division; and that the disposition taken by Archibald Lamond the father, to himself and spouse in conjunct-fee and liferent, and to Walter Lamond the son, *nominatim*, must carry the subject thereby disposed to the said Walter the son: and found that Agnes Lamond has right only to her share of the remainder of the estate, after taking therefrom that subject; and remitted to the Lord Ordinary to proceed accordingly;" altering Lord Hailes's interlocutor. And, on the 3d August 1776, "adhered."

*Act.* G. B. Hepburn. *Alt.* D. Armstrong, A. Crosbie.

1776. July 17. THOMAS GIBSON *against* JOHN GIBSON.

BILL OF EXCHANGE.

A donation cannot be constituted by a bill.

[*Supplement to Morison, V. 392.*]

COVINGTON. I doubt as to the principle, that bills must be for value received.

PRESIDENT. This however is established by the practice of 40 years.

GARDENSTON. Bills merely gratuitous are not held good. They are not the instrument proper for such a conveyance.

HAILES. I learned from Lord Elchies, 20 years ago, that, by the law of Scotland, a donation cannot be constituted by accepting a bill.

AUCHINLECK. I considered it as a fixed point, that donations and legacies could not be constituted by bill. This is the more necessary in our times, when every man wants money. If such donations were good by writings so informal, a man has nothing to do but to learn to subscribe another's name.

On the 17th July 1776, "The Lords found that the bill to Thomas Gibson was not sufficiently instructed;" adhering to the interlocutor of the Lord Justice-Clerk.

*Act.* W. Nairne. *Alt.* A. Crosbie.