

blank in the name to whom, that the receiver may make use of the same at his pleasure, as it is daily practicked.

It seemed here, That the proponer of the defence, Mr Fleiming, being a commissary, would have taken away the right of assignations not intimated, that he might draw all this water to his own mill, of confirming testaments; and, it may be, bishops would have obtained it.

It was lastly excepted, That this sum had been her former husband's and her's; and, after that, she had given the bond to be renewed unto the said Montcur and her for her lifetime, especially seeing it proports a delivery of money for himself and for her behoof. Whereunto it was replied, *Quod hæc omnia nihil operentur*; because, whatever the wife has, by our law, *jure nuptiarum, marito acquiritur*; and she might brought in her lap a great treasure to him, which was no longer her's, but he might have done with it what he liked; so that the giving of the liferent must be yet understood *donatio inter virum et uxorem*; which was revoked by the foresaid assignation. To the which it was duplied, That it could not be revoked *quia remuneratoria*; because, by the contract of marriage with Montcur, he was obliged to provide her to a liferent of a great sum of money; and, because the foresaid contract was in the hands of the heirs of her third husband, she protested for incident diligence. The Lords sustained this duply.

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1649. June 30. ANNA AIKINHEAD and some of Her MOTHER'S FRIENDS, against DAVID AIKINHEAD, Her Half-brother.

IN the action of exhibition by Anna Aikinhead, pupil, and some of her mother's friends, against David Aikinhead, her half-brother, it was excepted, That her tutors disclaimed that action. But, in respect it was replied, That they were the goodsir and other friends of the defender, named in testament by the defunct, the Lords sustained the action.

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1649. June 30. MR JAMES EISTOUNE against BEATOUNE and BROWNE.

IN the suspension by Mr James Eistoune against Beatoune and Browne, the reason for eschewing the failie of not-delivery of so many soldiers, which was the double of the money given, was sustained; because the said Eistoune, principally bound, might have altered his mind, contrary to his bond; since Bruce of Stanehos did not go captain of that expedition, but transferred his right to Browne, who was not so honourable a man to follow as Bruce was. Yet the Lords ordained the money received to be re-delivered; which was enough for a cautioner, to give, to an executor; suppose Beatoune pretended him to have satisfied Colonel Sir James Douglas, to whom he was cautioner for Browne.

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