

1650. *January 10.* ANDREW C————— *against* His Daughter EUPHAME.

IN the reduction, pursued by Andrew C————— against his daughter Euphame, of an assignation made by him to her, upon a reason libelled upon presumptions, and especially that it was never delivered to her, being made by him for love, and for her provision the time of the sickness, when he was inclosed : In respect of the reason libelled, and reply, together with the depositions of certain witnesses examined *ex officio nobili*, and the parties' declarations, the Lords reduced the said assignation : but reserved, to the said Euphame and her husband, any action that they could have for any adventitious sums or goods which she had right to, intromitted with by her father, as administrator to her, and which, by a provision in the end of the said assignation, she was obliged to renounce. The which provision, if it had not been adjected, I could not think the foresaid assignation any thing else but *donatio mortis causa* ; even as if a man, going off the country, had made to any such an assignation, the same would be thought of non-effect after his return ; so this assignation, being made *intuitu mortis imminentis*, in respect of the pestilence raging, must be thought expired, the fear of that hazard being past.

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1650. *January 10.* SCOT of HEARTWOODMYRES *against* MARGARET SCOT, his Wife's Daughter.

IN the suspension by Scot of Heartwoodmyres, for his wife, and himself *jure mariti*, against Margaret Scot, his wife's daughter, left an infant, and under her mother's tutory, who confirmed her said daughter executrix to her father,—by the reasons libelled against the said Margaret her decret, there fell out an emergent, eiked by the said Heartwoodmyres, *viz.* That the decret was only obtained against him *jure mariti* : and true it is, that, since the raising of the said suspension, his wife, who was principal debtor, was dead ; and so his interest ceased, and he could be debtor no more than if a bond of his wife's, being registrate against her, letters had been raised against her and him for interest, and they had suspended : in which case, she dying, he would be made free ; and if he had been imprisoned by way of caption, no suspension having been raised, he would have been relieved and set free after her death. And here it was noted, that there was a great difference between the ground of a debt and the way-making to the execution ; a decret not being the ground of any debt, but the preparing of a way for the subsequent execution : yet many thought the decret obtained in this case was more than a preparation for execution, and him to be constituted debtor thereby ; especially seeing he had postponed the charger in her payment, by raising of the foresaid suspension. Nevertheless the Lords superseded to give answer to this emergent, while they dispute on the principal suspension.

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