

of Seaforth, did dispone both these rights in favours of Mackenzie of Coull ; as likewise, assigned him to a contract made betwixt him and Logan ; whereby he declared, that he, being satisfied before a certain day, he should dispone the right of the estate to Logan himself, otherwise that he should have full right to the whole escheat. Whereupon Logan's heir, pursuing Mackenzie, to hear and see it found that his apprising of Seaforth's estate was satisfied by intromission ; he ALLEGED, That the whole benefit of the escheat ought to be allowed in the first end of his debt ; because, he having right to the said contract, he and his author ought and should have intromitted, and so have satisfied themselves ; he having full power to satisfy the same.

The Lords refused to sustain that article of the charge ; in respect there was no obligation, in the contract, whereby the donatar was bound to do diligence, and to pursue for the benefit of the escheat ; so that, notwithstanding thereof, he might take him to the apprising, and possess, by virtue thereof, until he were paid : And so found that the donatar is not, in law, obliged to do diligence ; and might not be pursued upon that ground, that he ought and should intromit.

Page 71.

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1669. July 20. ELIZABETH BARCLAY, Spouse to the LAIRD of TOWIE, *against* The Tutor, as Heir of Tailyie, and BARCLAY of AUCHREDY.

In a declarator of recognition of the estate of Towie, upon a gift granted by the King to the said Elizabeth ; whereupon she craved the lands to be declared to belong to her, upon a disposition made to herself by her father, whereupon seasine followed ; the lands holding ward of the King : It was ALLEGED, That there could be no recognition ; because the disposition, bearing the precept of seasine, did remain in the father's possession until he was upon death-bed, at which time infeftment was taken ; which could not prejudice his heir of tailyie, it being null of the law, and reducible.

The Lords considered, in general, the case of recognitions, and found, That a disposition and a precept, granted by a vassal in his *liege poustie*, and delivered to the party, was a good ground of recognition ; albeit the seasine taken thereupon was not until he was *in lecto ægritudinis* ; seeing, as to the granter, he did all that was in his power, by subscribing a precept, and appointing a bailie to give seasine. But, where the right and precept was still retained in his own possession, and nothing done thereupon until he was *in lecto*, they did demur to give any decision ; and in this case, depending before them, did ordain the Lord Fraser, to whom the disposition was delivered, to be examined upon oath anent the time of the delivery, and to what effect it was delivered to him : and, in the general, they did consider that there would be a difference in law betwixt rights made by a father to his own children, wherein there might be a reservation of the father's liferent, or where he might keep the same as administrator to his children ; and writs, which were conceived in favours of strangers, which were

never delivered till on death-bed, or did bear that they should be obligatory, as well delivered as undelivered. But the Lords gave no opinion of judgment, at this time, as to these cases.

Page 72.

1669. *July 21.* ANDREW WHITE of THURSTO *against* ELIZABETH MAXWELL.

IN a double poiding, raised by John Mitchell of Balvardie, as debtor to John Maxwell of Dalswintoun, by his bond; Andrew White of Thursto craved to be answered, as being creditor to Dalswintoun, and having arrested; and the said Elizabeth craved to be preferred, as having right from Sir Henry Nisbet, who was assignee, constituted by Dalswintoun, to the said bond.

It was ALLEGED, That the assignation was *inter conjunctas personas*, Sir Henry being Dalswintoun's brother-in-law; who, without any onerous cause, transferred his right to Dalswintoun's own daughter, who was then *in familia* with her father.

It was REPLIED, That the assignation could not be taken away *ope exceptionis*; but by reduction, upon the Act of Parliament 1621.

The Lords found no necessity of a reduction; but ordained, that Elizabeth should condescend upon the onerous cause; and, if the assignation was purchased by the means of the grand-mother, as was informed, or the means of any other person than her father, and what way she could prove the same.

Page 74.

1669. *July 22.* The RELICT of MR GEORGE PATERSON *against* His CREDITOR.

THERE being a decret recovered against the relict, as vitious intromitter with her husband's goods, in so far as she had received the sum of £60 Scots, due to her husband by the Earl of Wintoun; she did suspend, and intent reduction upon this reason,—That the decret was before an inferior court; and she, being an ignorant woman, her procurator did omit to propone several defences upon writs, which she now produced. *viz.* an assignation by her husband to that sum, and that she was decerned executrix-creditrix upon her contract of marriage.

It was ANSWERED, That the decret was *in foro contradictorio*, wherein liti-contestation was made, and, after probation, sentence pronounced.

The Lords did repone the suspender, notwithstanding, in respect of her condition, and that the reasons were instantly verified; and that decret against her, as vitious intromitter, made her liable to her husband's whole debts; but ordained her to pay the whole expenses. This was done, *me reclamante* and several others of the Lords, as being law and form of process; and the case being