

necessary. This is hard in the point of law ; intromission being to be understood *civiliter et cum effectu* of that which is free, all charges deduced.

Hay, *Clerk.*

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1668. February 1. LADY TRAQUAIR against EARL of WINTON.

THE Earl of Winton, having right by assignation, to a bond granted by the Lord Sempil, did grant a translation in favours of the Lady Traquair, and the Lady Jean, another of his daughters, bearing warrandice from his own deed ; and thereafter uplifted the debt. The said ladies pursued the Earl of Winton, as representing his grand-father, for payment of the sum ; because the Earl, his grand-father, had uplifted it.

The defender ALLEGED, That the translation, being a donation of the father's in favours of his children, whereof he was master, was revokable ; and that he had revoked the same, in so far as he had uplifted the said sum.

It was ANSWERED, That the said translation was out of his hands, having delivered the same to the pursuer's mother for their use ; and that he was obliged to warrant the same.

The Lords thought, That the translation, being in the Lady Winton's hands, being in law *eadem persona* with the Earl, it was equivalent as if it had been in his own hands ; and that he might destroy or revoke the same. But the parties, being of quality and of near relation, they did not decide this case ; but recommended to some of their number to endeavour an accommodation.

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1671. December 17. HALYBURTON against SCOTT.

A PROVISION, granted by a father to a daughter for love and favour, being quarrelled by a creditor upon the Act of Parliament 1621 :

It was ANSWERED, That the father, the time of the granting of the said right, had an opulent estate beside, out of which the creditor might have been satisfied. And the Lords, before answer, having ordained that a trial should be taken of the defunct's estate ; and witnesses being adduced to that purpose, it was found, That the defence was not proven. It appears that the defence was not relevant : and that a creditor is not holden to debate whether his debtor had a competent estate to satisfy his debt *aliunde* ; and that debtors can grant no right without an onerous cause, until the debt be satisfied.

Haystoun, *Clerk.*

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