

imbursement of his expenses; because by his bond charged upon, he is bound and obliged to perfect the said gift on his own charges.

The Lord Craigie inclined to find, if Tarbet had uplifted the said 5000 merks, then to decern him in repayment thereof to this pursuer; but if it was yet in the debtor, *viz.* the second donatar's hands, then reserved action to the pursuer against him as accords.

*Advocates' MS. No. 202, folio 102.*

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1671. *July 5.* LAURENCE PARK *against* ELIZABETH BINNIE, Relict of MR. LAURENCE SCOT.

ONE Laurence Park, pursues Elizabeth Binnie, relict of Mr. Laurence Scot of Bavillaw, one of the clerks of Session, by way of declarator, to hear and see it found and declared that it was Mr. Laurence his mind and intention to settle the fee of a sum contained in a bond granted to him by ——— on the said pursuer as his godson. The acts out of which he elicited his intention, were these, *1mo*, That in his lifetime, before famous witnesses, he declared the right of that sum belonged to Laurence Park's father; *2do*, He ordered a writer to draw an assignation to the said bond, to be given by him to the said Laurence; which, though it was never subscribed, yet having died suddenly, it was found amongst his papers, and it was a thing he was minded to do. *3tio*, They referred it to the relict's own oath, that it consists in her knowledge, that it was her husband's firm resolution that this sum should belong to this pursuer, with sundry others.

My Lord Craigie was content to give them the Lords' answer thereupon; who, before answer, ordained all writs that might anyways clear the trust and Bavillaw's intention, especially the said unsubscribed assignation, to be produced.

*Advocates MS. No. 205, folio 102.*

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1671. *July 7.* MURDOCK *against* SIR ANDREW DICK.

SIR Andrew as administrator of the law to his son William Dick, sells a tenement of land to one Forester, and he to Murdoch. Sir A. is obliged to warrant this right at all hands, and to procure his son's ratification at his majority. Sir A. and his son altogether disagreeing, he was so far from procuring his son's consent, that his said son has intented action of reduction of this alienation made by his father in his nonage to his prejudice. Murdoch finding his right thus drawn under question, intents a summons against Sir A. for warranting him, and for obtaining his son's ratification.

Against which it was ALLEGED,—That Sir A. could never be decerned to warrant till there were a distress; but *ita est* there is no distress condescended upon, save only a naked citation given by Sir A.'s own son to this pursuer for reduction of his right; which, till decret follow thereon, can never be the ground of an action