1677. *June* 26. ANENT A BASE SEASINE OF WARD LANDS.

IT was inquired, if a base seasine of ward lands, taken on a mandate or precept of seasine, given by a party when he is *in lecto*, can import recognition? *Videtur quod non;* because the warrant of the seasine is null in law, being on death-bed; and Craig, *Feud.* p. 344, tells of a decision, by which the Lords found a seasine, null for want of registration, could not infer recognition. Yet I think the Lords would not decide thus now. See M'Keinzie's Pleadings, p. 58. *Vide infra*, No. 590. [*Grant* against *Mackenzie*, 6*th July*, 1677.] Besides, neither want of registration, nor deeds *in lecto*, are such intrinsic nullities but they are valid till quarrelled. *Advocates' MS. No.* 580, § 3, *folio* 289.

1677. *June* 26. JOHN DICKSONE *against* BESSY SHORT.

ONE Bessy Short and her husband having granted a bond for a certain sum of money to one John Dicksone, tailor in the Potterrow of Edinburgh; many years after the husband's death, she, being charged to pay the sum, suspended and raised reduction on this ground, that the bond was *ipso jure* null, being granted by a woman clad with a husband, and could never affect her, being *tuta exceptione Senatus-consulti Velleiani*, but only her husband's representatives. Whereunto I ANSWERED for Dicksone, the charger, that she behoved still to be liable, notwithstanding her revocation, because she since her husband's decease has acknowledged the debt, and taken it upon her, and homologated and ratified the bond, in so far as she has paid sundry years annualrents of it since his death; and as a minor may preclude himself of the benefit of restitution *in integrum* against deeds done to his lesion in his minority, by ratifying the same either expressly or implicitly, by paying annualrent, (as has been decided,—See Dury, *penult. July*, 1630, *Johnstoun*,) so may a woman when she becomes a free person.

REPLIED,—There is a great disparity, for a minor's obligation is not *ipso jure* null, but a married woman's is; *et non-ens nequit ratificari, nam non datur cui accedat.*

DUPLIED,—The obligation of a minor wanting curators is *ipso jure* null, and yet he may ratify it.

This being taken to interlocutor, the Lords, before answer, ordained her to produce the discharges of the annualrents paid; to the effect they might advise and consider, *quo animo*, she paid it, whether *se obligandi* or *ex errore*, for *ignorantia juris in muliere est excusabilis, L. D. de juris et facti ignorantia;* and this in regard it was alleged, that what she had paid was out of mere simplicity and ignorance, not knowing she was not obliged.

Then the charger, 2*do, et separatim*, ANSWERED, She ought still to be liable, because he offered him to prove the debt contained in the bond charged on was originally her own before the marriage, and that her husband only *pro interesse* granted this bond; and so she was *in lucro captando*, not *in damno vitando.* 3*tio*, That she was executor or intromitter with her husband's goods.

Both thir were found relevant, *per se*, and referred to her oath; and she neither

compearing to depone, nor producing the discharges, the term was circumduced, and the letters found orderly proceeded.

For the weakness of homologations, *vide supra, November*, 1676, No. 508, § 4. See Craig, p. 305. *Advocates' MS. No.* 581, *folio* 289.

1677. *June* 26. The CREDITORS of PATRICK INGLIS of Eastbarnes *against* JOHN INGLIS of Cramond.

THERE was a large debate between the creditors of Mr Patrick Inglis of Eastbarnes and Mr John Inglis of Cramond, who had an infeftment of annualrent furth of these lands, yet the other creditors were preferred to him; the case must be inquired after. *Vide supra,* A large debate of the creditors and Mr Patrick against his mother in December 1671; it is No. 282.

Advocates' MS. No. 583, *folio* 289.

1677. *June.* The EARL of LOUTHIAN *against* the MASTER of BALMERINOCH and JOHN ELPHINSTON.

THE Earl of Louthian raised a reduction and declarator against the Master of Balmerinoch and John Elphinston, to hear and see it found and declared, that a bond, wherein the said John Elphinston's name was, for the master's behoof, was truly blank in the creditor's name and sum, and left by the pursuer's father in the hands of Sir Thomas Nicolsone of Carnock, advocate; and upon his decease was found amongst his papers by James Chalmers, then his servant, afterwards advocate, and taken out and delivered to the master, and filled up without any onerous cause; and therefore to be decerned to give it up. This was a reflecting conveyance if true, and like the case the town of Hamilton have with Robert Hendersone, for filling up in a blank bond 3000 merks instead of 500 merks. See the Information, *apud me.* Thir blanks are dangerous. *Advocates' MS. No.* 584, *folio* 289.

1677. *June.* ANENT *INDEBITI SOLUTIO.*

WHERE one pursued for repetition of money *indebite solutum, condictione indebiti,* it fell to be questioned whether the annualrents of the sum paid could be condicted, since they were *fructus et accessio principalis sortis,* and so should follow it. On the other hand, they were not paid, and so could not be repeated; their mother only was paid, and they are *fructus bona fide consumpti.* And thus Cujace, in his Paratitle *ad Tit. C. de privilegio fisci,* tells, where a privileged creditor retracts the payment the debtor by gratification had made to another less privileged creditor, *condictione indebiti,* he recovers it, but *sine usuris.* Yet our Lords, on the 5th