

The Lords found, That the verbal intimation, though not sufficient alone, yet that Balmerino, being so certiorated, employed an advocate to defend, who appeared, saw, and returned the process,—sufficient: And found it relevant to be proven *scripto vel juramento*; seeing intimations of pleas are ordinary to be made at the bar to the party's ordinary advocate; likeas it was notour that James Chalmers was Balmerino's ordinary advocate.

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1678. *January 17.* PEEBLES *against* The LORD ROLLO.

IN a competition betwixt the donatar of a husband's escheat, and the successors of a wife, to whom he had dispoed his moveables, for love and favour;

It was ALLEGED for the donatar, That a disposition of moveables, by a husband to a wife, could have no effect against a donatar or creditor of the husband; because, if such dispositions could establish the right of their moveables in the wife's person, the same did recur to the husband *jure mariti*: and, therefore, all diligence of creditors who would affect such moveables, as being in the disposal of a husband, must be preferred; for otherwise creditors might be defrauded by such gratuitous dispositions of husbands to their wives.

The Lords found the disposition to the wife not to exclude the donatar of the husband's escheat, except in so far as concerns clothes and ornaments for her person; which were exempted *à communionne*.

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1678. *January 18.* The LAIRD and LADY AIRTH *against* The EARL of MONTEITH.

UMQUHILE Captain Bruce having apprised the lands of Airth from the Earl of Monteith, the Earl did ratify the apprising; and the Captain gave a reversion for certain years after the legal. The Lady Airth, daughter and heir to the Captain, and Richard Elphingston of Calderhall, her spouse, pursue a declarator of the expiring of the reversion.

The Earl of Monteith having right from Ker and Shaw, and not as representing his goodsire, ALLEGED, That the Captain's right was satisfied within the time of the legal reversion; at least, before declarator of the expiring thereof; because clauses irritant are ever purgeable by payment or satisfaction before declarator.

It was ANSWERED, That the defence is only relevant as to penal clauses irritant, or temporary reversions, where the granter of the reversion had not a full right before; but here the temporary reversion was merely gratuitous; the Captain having a full right, by an expired apprising, ratified by this debtor; so that the reversion was mere favour, and not penal.

The Lords found the defence only relevant, by satisfaction within the years of the temporary reversion.

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