

legitima potestate as to the affecting of his part, and granting of bonds to that effect.

No 39.

Reporter, *Justice-Clerk.*Clerk, *Gibson.**Dirleton, No 402. p. 198.*

1678. July 29.

HERIOT *against* LYON, &c.

No 40.

IN a reduction at George Heriot's instance against Hary Lyon, &c. of their bonds, as given *in lecto*, alleged they were but the renewing of old bonds, or else granted for counts of work wrought.—THE LORDS sustained them; but declared they would consider the counts if exorbitant, since it is not like the defunct *in lecto* did it; and also take their oath in supplement on the truth of the work.

Fol. Dic. v. 1. p. 214. Fountainball. MS.

1683. February 27.

EARL OF LEVEN *against* MONTGOMERY.

No 41.

THE Countess of Leven, with consent of her curators, having entered into a contract of marriage with Mr Francis Montgomery, wherein she provided him in liferent to the barony of Inchleslie, in case there should be no children of the marriage, or in case the children should decease before Mr Francis, that was declared to be in satisfaction of his courtesy of the whole estate: As also, by the said contract, it is provided, that in case he should have children surviving himself, he was to have the liferent of the whole estate, only he was to pay the current annualrent of the debt; and, by the contract, the Lady, with consent of Mr Francis, was empowered to burden the estate with 10,000 merks, for providing her house with plenishing; and Mr Francis was obliged, after the decease of the Viscount of Kenmore, to apply 50,000 merks, which was his portion, for payment of the debts; and in case the marriage should dissolve without children, the Lady and her heirs were obliged to refund the said 50,000 merks to Mr Francis after her decease, according to the terms of the said contract. The Lady, with consent of Mr Francis, granted bond to Lauchlan Leslie for 10,000 merks. The Lady, upon death-bed, ratifies the foresaid contract of marriage upon oath, and also the foresaid bond for 10,000 merks, which she had granted upon death-bed; she also, upon death-bed, grants a discharge to Lauchlan Leslie her chamberlain of his intromissions with the by-gone rents of the lands, and at the same time dispones her half of the moveables, which were in common betwixt her and Mr Francis, and delivered to him all her jewels, and particularly a jewel which was gifted by the King of Sweden to General Leslie her grandfather as a token, and which her grandfather did legate to the family, with a

The Lords refused to sustain a deed on death-bed, disposing on moveables, *in quantum* prejudicial to the heir's relief of moveable debts.