

1685. *March.* The COLLEGE of ST ANDREW'S *against* RAMSAYS and their HUSBANDS.

ONE Ramsay having alienated his estate, by way of mortification, to the College of St Andrew's, who pursued his heirs to denude themselves of it;—Alleged for the defender, That the deed was never delivered, nor contained a clause dispensing with the not delivery, nor yet reserved a power to alter and innovate; but was found lying by the defunct, at least in the hands of a schoolmaster, to whom he had given it to write two other duplicates; and, by a provision in the mortification, the defunct and his heirs were to retain one double, and the other doubles were not subscribed. Answered for the pursuer, 1. It was rational for the mortifier, who had reserved his own life-rent, to retain the deed, especially he being patron of the mortification; 2. Ramsay wrote a letter to the College, declaring, *per verba de presenti*, that he had mortified the lands to the College, for educating some bursars; and, upon that insinuation, recommended a bursar to the College; which latter is equivalent to delivery; and the recommending of the bursar is an exercise of his right as patron of the mortification; and mortifications are favourable. The Lords, before answer to the debate, recommended to some of their number to settle the parties.

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1685. *March.* ALEXANDER BOTHWELL *against* MR GEORGE ROME.

JAMES Clerk having given a letter of credit on George Rome, factor in London, to advance to Bothwell £40, if he stood in need on't; Bothwell drew a bill on Clerk, payable to James Rome, George's brother; which bill being protested, and Bothwell pursued for not-payment, it was alleged for him, That the money given for the bill being truly employed for Clerk's use, whose apprentice the drawer had been, and George Rome being debtor to Clerk, the drawer ought to have compensation upon the debt due to Clerk. Answered, That compensation is only competent *inter eosdem*; and James, and not George Rome, is creditor in the bill, for an onerous cause; 2. Clerk's escheat is gifted. The Lords found, by the letter of advice sent with the bill, that the bill was for George Rome's behoof; and therefore found the defender's allegiance relevant to be proven, that James Clerk, who is now bankrupt, was creditor to George Rome, and that the money got by the credit was expended for goods to Clerk.

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1685. *March.* SKELMORLY *against* His BROTHER ARCHIBALD.

OLD Skermorly having given a bond of provision, to his second son, of 8000 merks, and thereafter paid him 2000 merks, and took his bond for the same as so much borrowed money; after his death the second son agreed to take from his eldest