

President having restricted the donatives to L. 5000 Scots, in regard there was so much given the year immediately preceding; and the rest reclaiming at this modification, and urging that there used never *ad summum* to be given more than L. 2000 Scots *per annum*, and that if such donatives had been pursued for by the Officers of State, the Lords could not have sustained process for them as a debt; the President inclined to decern the partners to bear a proportion of what they knew was customary to be given, as if they had tacitly consented thereto: but the plurality of the Lords run, that as to Barnton and Hadden, the two principal tacksmen, they behoved to stand to what they acted, or gave away in common: but refused to sustain it relevant against the assumed parties, what was usual in such cases, or what they knew to have been given before; but allenarly to bear a share of what they consented to, or what they now are content to allow.

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1692. *December 20.* JOHN DUNCAN *against* MARGARET AIKENHEAD.

JOHN DUNCAN, writer, against Margaret Aikenhead. It was ALLEGED,—That the Commissaries, in order to evacuate the act of Parl. 1690, that particular dispositions needed not be confirmed, they always preferred the nearest of kin offering to confirm, for the benefit of their own quot and dues. The Lords here preferred Duncan, the assignee, to the nearest of kin, though confirmed; and ordained him to get the possession only of all specially disposed, and contained in the two particular inventories under the defunct's hand, of the same date with the disposition, and whereto it relates, and so are a part of it. Some of the Lords inclined to think it only a legacy, and *donatio mortis causa*, seeing it assigned to all she should happen to have at the time of her decease; but the Lords decided *ut supra*, in respect there was a symbolic delivery, and the right bore onerous causes; and they were not, after so long a time, to be presumed to be her husband's, but her own; and they thought that otherwise the late act of Parliament might easily be frustrated and eluded.

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1692. *December 20.* The LADY BROTHERTON, and OGILVY *against* SCOT of Brotherton, and SCOT of Comiston.

THE Lady Brotherton, and Ogilvy, her husband, against Scots of Brotherton and Comiston. The question was, if her liferent, of 1200 merks by year, off her son, should pay the retention of one of six imposed on annual-rents by the act of Parl. 1690.

ALLEGED,—This was an annuity, and no annual-rent; and as it would be free of public burdens, so also of retention; and the 10th act of Parl. 1690, names annuities, but the act imposing retention has *de industria* omitted them.

ANSWERED,—This 1200 merks answered to a principal sum, and behoved necessarily to abide retention, as was found, in 1691, between Mr. Andrew Massy