

merks, in liferent; and, though the style of the adjudication bore the whole sum to them in liferent, yet that behoved to be understood *in sano sensu, et singula singulis*; seeing *non agebatur*, by adjudging, to augment or increase her jointure, but only to secure the money on the debtor's estate from perishing.

ANSWERED,—The very nature of the right bore her plainly to the liferent of the whole; and it was equivalent to an assignation from the husband, and needed no farther declaration of his intention.

The Lords found it could not be the husband's meaning to give her any more liferent, but precisely of the primary sum of 1400 merks, and not of the subsequent annualrents accumulated in the adjudication. *Vol. I. Page 658.*

1695. *January 16.* ANNE CARNEGIE *against* JOHN RAMSAY, Merchant in Perth.

THE Lords had found, that, by the conception of the testament, she had right to her 600 merks of jointure, and to her 3000 merks of tocher. But, since that time, a codicil, subsequent to the testament, being produced, it was contended he had thereby altered the same, and restricted her, in case of her daughter's decease, to the 3000 merks; because, in that event, it bore she should fall from her jointure. But the words, "from her," being in the margin, and unsubscribed, the Lords rejected this codicil, and adhered to their first interlocutor.

*Vol. I. Page 659.*

1687, 1693, and 1695. THE DUKE of HAMILTON *against* MR JOHN ELIES of ELIESTON.

[See the previous parts of the Report of this Case, Dictionary, p. 9293.]

1687. *July 28 and 29.*—The Duke of Hamilton *against* Mr John Elies of Elieston and Sir James Hamilton of Maner-Elieston. This is a reduction which they had raised of the Duke's declarator of non-entry, mentioned 12th March 1684. And they craved to be reponed *against* that decret, as pronounced in vacance by three Lords, having a delegation from the rest, without reporting to the whole body. ANSWERED,—The decret was pronounced in session, and the seeing it extracted was only remitted to these three Lords, who ordered it in vacance.

*2do.* That the Duke's letter was not considered. The Duke opposed the decret.

For Squire Hamilton, it was ALLEGED, The decret was in absence *quoad* him; for, though there was a bill given in his name, that was only done by Mr John Elies, and he denied that he was present at Robert Hamilton's deponing. And the execution *against* him, (being then in Ireland,) does not bear that a copy was left at the market-cross of Edinburgh, and it was not stamped, and so was null. And if he, as apparent heir, was not called, then the whole decret fell; as was found in the Duke's case with the Lady Callander, 16th July current.