sive title, as lawfully charged to enter heir, and yet the decreet does not bear the production of any general charge or executions thereof.

ANSWERED,—You took a day to produce a renunciation to enter heir, (which acknowledged the charge,) and suffered the term to be circumduced against you for not doing it; and so cannot object this nullity now, you having acquiesced.

REPLIED,—The offering a renunciation appears now to have been a mistake; for, if I had known there was no general charge, I would never have taken a day to renounce; and it is as essential a nullity as if one pursued on a bond and the same were not produced; as was found lately betwixt Mr David French and David Dewar.

The Lords here refused to repone against this decreet; and found it abundantly supplied by their offering a renunciation; especially seeing the charge and executions are now produced to fortify the decreet.

Vol. I. Page 786.

1697. *June* 29 *and July* 16. The EARL of NORTHESK *against* JOHN CARNEGY of KINFAUNS and LADY KINFAUNS.

June 29.—THE Lady Kinfauns and John Carnegy, her son, pursue for an aliment during the dependence of the process between the Earl of Northesk and them. The Lords considering her tocher was £20,000, and that her jointure is 2500 merks yearly, they modified 1400 merks to herself, and 600 merks to her son; which 600 merks they allocated upon Blair, *alias* Carnegy of Kinfauns, the son of the first marriage. He reclaims by bill, that he having no benefit by his father, (but succeeding to his mother, who was heiress of Kinfauns,) none of the funds could be laid on him.

ANSWERED,—Their father brought in 40,000 merks of patrimony into the family of Kinfauns, with which he relieved that estate of so much debt, and had power by his contract to burden it with 20,000 merks; and which he has accordingly done, by leaving to his son of the second marriage £5000 sterling, and providing him to that portion.

REPLIED,---A faculty not specifically exerced expires and dies with the person; and this provision to the second son has no relation to that reserved power, nor is it *in terminis* applied, not being done by infeftment.

DUPLIED,---No law requires a precise application to the reserved power, but any contracting of debt is a sufficient exercise of the faculty; and, though it be personal, yet any creditor may legally affect it, and thereby transmit and perpetuate it.

The Lords were clear such faculties did not require a specific implement, but that contracting of debt exhausted the same: yet, that they might proceed on the distinctest grounds, they ordained both contracts to be produced, the first containing the faculty, and the second the alleged exercise of it.

Vol. I. Page 780.

July 16.---The Lords advised the debate between the Earl of Northesk and John Carnegy, son to Kinfauns, about the right to a blank translation of a bond of 9000 merks, found lying beside Kinfauns at the time of his decease. Northesk adduced many adminicles and presumptions to convince the Lords that it

was his father's evident, and taken out of his charter-chest by his uncle Kinfauns; seeing it was notourly known what access he had to his father's writs during the time of his distemper; and that the like trick was done in a case of George Cheyne's bond; as was found by the Lords, July 17, 1679, marked by Stair, *et semel malus semper præsumitur talis in eodem genere;* and that it was found in a bundle, wrapt up with other papers, uncontrovertedly belonging to Northesk; and that his father had given a receipt of it to Gosford.

ANSWERED,---A blank writ in my hands is as much presumed mine as if my name were filled up in it; and, as to the particular condescendence, they denied the same.

The plurality of the Lords found the presumptions sufficient to convince that the said blank translation belonged to Northesk, and not to Kinfauns.

Against this interlocutor, the Lady Kinfauns, as executrix to her son, protested for remeid.

[See other Cases between the same Parties pointed out in the Index to the Decisions.]

Vol. I. Page 786.

1697. *January* 29 *and July* 20. ANDREW MASSIE *against* The MAGISTRATES of EDINBURGH.

January 29.---PHILIPHAUGH reported Mr Andrew Massie against the Town of Edinburgh, for reducing the decreet whereby they deprived him from being one of the Philosophy-Regents in the College of Edinburgh. His *first* reason was against their competency and jurisdiction; for though they be patrons, empowered to place masters there, yet it was alleged they could not depose; for a patron presenting a minister has no power to judge him in order to deprivation; and though they produced a charter from King James in 1582, giving them *facultatem removendi*, yet that was before the erection of the college, when it was but *studium generale*, (that any learned man set up, and taught the sciences in his chamber, as many do at London, Amsterdam, &c. where there are no formed universities;) which differs much from a university, or *Academia*, where degrees are conferred; and, if masters in colleges malverse, or be negligent, the Magistrates may either pursue them before the Lords of Session, or the Commission for Visitation of Schools and Colleges; and that, if the Town had any such intrinsic power of judging and depriving, they would have certainly made use of it in a hundred years' space, and yet no instance can be given; for Mr Cunnyngham was not deprived by them, but demitted: And, if professors were so precarious as to be turned out *ad beneplacitum* of the Town Council, few scholars of pregnant spirits would accept of these offices; which would tend to the decay of learning, and prejudge the education of youth.

ANSWERED,---The Town's jurisdiction and competency was clearly founded in their right of patronage and the foresaid charter; and a *studium universale* and a college was all one as to this power, and their gifts and admissions did not bear *ad vitam;* and their salaries were paid by the Town, and they depended as much upon them as the assessors do; and yet none will contend but the