ANSWERED for Susanna Marshal,—The father could not evacuate the provision in her mother's contract of marriage, by granting *ex post facto* gratuitous bonds to the children of the first marriage; which he was under no civil obligation to grant, by contract with their mother; and the heir of a marriage may quarrel such gratuitous deeds, *Stair, Instit. Lib. 3. Tit. 3. §. 19.*

REPLIED for George and Helen Marshals,—Though a father cannot, in prejudice of a provision in his contract of marriage, do fraudulent or merely gratuitous deeds: he being fiar, is not tied up from rational deeds, for just and necessary causes; which is clear from the author of *Les loix civiles*, in the preface to that part of his treatise concerning succession, N. 10; the decision betwixt *Anderson* and *Bruce, December* 1, *and* 21, 1680; and seems to be also my Lord Stair's opinion, in the place cited. Now, a bond of provision, by a father to a child, cannot be considered as a fraudulent gratuitous deed; since the law of nature obligeth men to provide their children.

The Lords admitted the children of both marriages to come in *pari passu pro rata*, according to their respective provisions in the bonds and contract.

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1710. *June* 23. JOHN GRANT of Auchriachan, *against* the DUKE of GORDON.

JOHN GRANT raised reduction of a bond granted by Robert Grant in Tombreck, his father, in April, 1686, to the Duke of Gordon, for 2000 merks of principal, with annual-rent and penalty; and of a bond of corroboration thereof granted by himself, in November, 1705, after his father's decease; upon this reason, that the original bond, granted by Robert Grant, was for no onerous cause; and not to be paid, providing the granter behaved himself dutifully to his Grace, while he continued his tenant, and should never militate against his heirs, in case he happened to die before any action intented thereon: which was offered to be proved by the Duke's back-bond, in the hands of Gordon of Glastirum; for recovering whereof, the pursuer craved a term and diligence. He pleaded, that his father having never misbehaved towards his Grace, nor been sued in his lifetime, the original bond was void and null: and the bond of corroboration, granted *errore facti alieni*, behoved to fall in consequence; seeing *ubi principalis causa non subsistit, nec ea quæ sequuntur, locum habent.*

ANSWERED for the defender,—1. The pursuer cannot have a term assigned for recovering the back bond; which, being his own evident, he ought to have produced *in initio litis.* 2. *Esto* such a back-bond were produced, the pursuer could found nothing thereon; since his granting the bond of corroboration imported that he renounced all exceptions against the debt, passed from the back-bond, and acquiesced in the alleged miscarriage of his father.

REPLIED for the pursuer,—1. He must needs have a diligence for recovering the back-bond, since he condescends upon the haver, who will not part with it till he be compelled. 2. Though the pursuer, by granting the bond of corroboration, might be understood to have renounced, and past from objections against

the bond corroborated, upon any intrinsic nullities, as the want of witnesses, or the writer's designation, or the like; yet it is ever competent to the granter of a corroboration, to except, that the debt in the original bond is not due; especially where the exception is founded upon the creditor's own fact and deed, as that the original bond was discharged by him: and upon the matter, the back-bond founded on by the pursuer imports a discharge.

The Lords found the reason of reduction relevant, and assigned to the pursuer a term to recover the back-bond.

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1710. *June* 27. The MAGISTRATES and PROCURATOR-FISCAL of NEW-GALLOWAY *against* JOHN CANON of Barley.

AT discussing a suspension of a decreet of the Bailies of New Galloway, fining John Canon in 300 merks for swearing thirty oaths, that is, in ten merks for each oath, conform to the *Act* 19. *Par.* 1. *Sess.* 1. *Act* 22. *Par.* 2. *Sess.* 3. *Ch.* 2. upon this ground, that the act of Parliament, imposing ten merks for swearing *toties quoties*, is to be understood of ten merks, not for every oath, but for every conviction; as the words *toties quoties* are taken in the *Act* 38. *Par.* 1. *Sess.* 1. *Act* 21. *Par.* 2. *Sess.* 3. *Ch.* 2. and therefore, in church judicatures, a person is never censured as guilty of relapse, till after conviction. The Lords found, that *toties quoties* in the act of Parliament is to be understood of every oath, and not of every conviction only. But they modified and restricted the fine to L.100; in respect it was alleged for the suspender, that the oaths were emitted by him in passion, when provoked by abuses he met with from the Magistrate and his coy-duke, who tempted him to swear, that they might catch him in a fine: and preceding provocation extenuates the punishment of crimes *in foro soli*, though not *in foro poli*; and it may be said of oaths vented in passion, (which is *brevis furor,)* that *lingua juravi, mente juravi nihil.*

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1710. *July* 4. JOHN WHITE, late Bailie of Kirkcaldie, *against* JAMES HENDERSON and other Tenants in Birkhill.

JAMES HENDERSON, Alexander Donaldson, William Paterson, and John Morris, tenants in Birkhill, taken with caption for a civil debt, at the instance of Bailie White; having, to obtain their liberty, obliged themselves conjunctly and severally, by a bond of presentation, to pay the debt in the caption to the Bailie, against the 20th of June, 1709, or else to present themselves prisoners to the messenger that day, betwixt eleven and twelve hours, within the dwell-