of Eccles to insert any son therein he pleased, that power of election fell with him, and is not competent to his assignee.

ANSWERED for the pursuers,—Prescription is sufficiently interrupted by the assignee's possession. 2. The second objection would have some weight, if the blank in the gift were an absolute blank, without any designation to demonstrate the person; but the person being demonstrated by the character of son to such a man, it is most probable, that seeing Eccles had several sons at his obtaining the gift, the king intended, by leaving the son's name blank, to have the grant pass to the longest liver of the sons. 3. Albeit the right of primogeniture prevaileth in succession, it hath no prerogative in grants of this nature. 4. The assignee, as *procurator in rem suam*, hath the same power to fill up the blank with the name of any of Eccles's surviving sons, as the cedent might have done.

The Lords found, That any possession by Maitland of Eccles, or his assignee, within forty years, interrupts prescription. And found, That the gift in favours of Maitland of Eccles, and his son, became not extinct by the father's death, without filling up the blank; but subsisteth in the person of the son now alive.

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1712. *July* 9. BARBARA FEA, Spouse to PATRICK TRAILL of Ellness, *against* Her Husband.

IN the process, at the instance of Barbara Fea, against Patrick Traill, her husband,—The Lords found the defender obliged to aliment the pursuer, according to his fortune: Albeit it was alleged for the defender, that it was the duty of a wife to follow and live with her husband; and if the pursuer would come to Ireland, where the defender resides at present, he would entertain her according to his quality and fortune: In respect it was answered for her, that if the defender would tell her in what particular place of Ireland he is, and advance money to defray the expense of her journey, she was content to repair to him; but since he declines to let her know where he may be found, and to furnish her money to enable her to come to him, his offer to aliment her in Ireland is but a mere sham and amusement: especially considering that she had formerly gone in quest of him to London, who, finding her there, maltreated her; and then, deserting the place for her sake, retired she knows not whither. But he having a land estate in Orkney, she ought to have an aliment out of that in the mean time.

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1712. *July* 9. ELIZABETH GRANT, Spouse to JAMES KENNEDY, Periwig-maker in Edinburgh, *against* PATRICK GRANT of Dunlugas.

ROBERT GRANT of Dunlugas, having, in anno 1687, disponed his estate to Patrick Grant, his eldest son in his contract of marriage, with the burden of 6000

merks to Andrew Grant his younger son, and Elizabeth Grant, his daughter, for their provisions; to be divided among them, and paid at such terms as their father should appoint: In implement of this obligation, Robert Grant, in November, 1693, assigned to Andrew and Elizabeth Grants, all that was addebted to him by John Campbell of Friertoun, his father in law; and further, he, and Patrick Grant, his eldest son, obliged them to pay to Elizabeth, 1000 merks; declaring the bond and assignation to be in full satisfaction to Andrew and Elizabeth, of all they could claim through their father's decease, or their eldest brother's contract of marriage. Elizabeth Grant pursued Patrick, her eldest brother's son, as representing his father and grandfather, for payment of the 1000 merks, and the equal half of the other 5000 merks due to her by the above mentioned settlement.

ALLEGED for the defender,—That Robert Grant, the father, had exerced his faculty of division by giving the pursuer 1000 merks in full satisfaction; which effectually excludes her from all further claim.

The Lords found, that there is *jus quæsitum* to the pursuer by the contract of marriage; and that the means assigned by the second bond of provision proving ineffectual, she might repudiate the same, and thereby hath an interest to claim an equal share of the provisions to the children in her brother's contract of marriage. But the Lords thought, that if she did refuse to accept of the father's second deed, she could not claim the additional 1000 merks as a *præcipuum*. The Lords reasoned thus;—the pursuer's right to a share of the 6000 merks was no ways extinguished: because, though the father, by his power of division, might give more or less of the 6000 merks to her brother and her; he was still obliged to give the whole betwixt them. If the father had made no division, the son and daughter would have had right to the 6000 merks equally, and by just proportions: which *jus quæsitum* could never be taken from them, but with their own consent, except upon payment of the whole 6000 merks to one or other, or both.

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1712. *July* 10. The MAGISTRATES of EDINBURGH *against* the COUNTRY BREWERS.

IN the cause at the instance of the town of Edinburgh, against the brewers of the shire (mentioned *supra*, 18th July, 1711.) It was alleged for the town, that they may impose a greater duty upon the sledge, than upon the load, proportionably to the greater quantity of ale brought into the town by the sledge. For this petty custom of eight pennies was imposed upon the load, which was eight gallons; and four pennies upon the burden, which was four gallons: and the load and burden were rated, not because the one was carried on a man's back, and the other on horseback; but because the load consisted of eight gallons, and the burden of four. Whence it follows, that two loads or sixteen gallons now charged upon a sledge, ought to pay double; and so proportionably, according to the greater quantity of ale that shall be imported upon a sledge.