

PERSONA STANDI.

1740. *January 6.* CASE of SIR ALEXANDER M'DONALD.

THE Lords refused to give judgment on a petition in name of Sir Alexander M'Donald, because the honours were forfeited in the person of Sir Donald his uncle; though for any thing that did or could appear to the Court, Sir Alexander might have right to that title of honour otherwise than through his uncle. Nothing of this stands upon record, because the petition was withdrawn, but I have marked it pretty fully. (See NOTES.)

No. 1.

1749. *December 7.* DUGUID *against* MACOMBIE.

REBEL denounced and registrate on a fugitation in the Justice-Ayr, found not to have *personam standi* to plead defences;—*sed quibusdam prima vice dissent.* But afterwards we adhered *nem. con.* (See DICT. No. 22. p. 10,162.)

No. 2.

See NOTES.

PERSONAL AND REAL.

1738. *January 10.*

CREDITORS of SMITH of Nungate *against* His BROTHERS and SISTERS.

A DISPOSITION to a son bearing, "These presents are granted with the express burden of the payment of 8000 merks, (which my said son by acceptance hereof binds him to pay) to &c. my children, &c." and the

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precept of sasine granted “with and under the burdens, provisions, &c. “above written;” but this burden not recited in the sasine, otherwise than by a general reference; yet the Lords found *1mo*, That by the conception of the clause this debt was a real burden; *2do*, Though not engrossed in the sasine otherwise than as above, they found it effectual against creditors. As to the effect of general references in sasines, *vide* the prints in this case, particularly those for the creditors. (See DICT. No. 68. p. 10,246.)

1739. June 20.

CHILDREN of SIR DAVID MURRAY, and ROBERT GORDON, Their Assignees, *against* The EARL of MARCH and the CREDITORS of BROUGHTON.

No. 2.

A DISPOSITION to a son in his contract of marriage, dated 1710, “providing and declaring, and it shall be provided in the charters and infeftments to follow hereupon, that these presents are granted, and the lands, &c. are resigned with the express burden of payment of the whole debts and sums due by the father to his creditors, and contained in a particular list, as also with the burden of payment to the said Sir David Murray’s children of the respective provisions granted by him to them, all particularly set down in the foresaid list, subscribed by the said Sir David and Alexander Murray, of the date of these presents;”—a list was accordingly duly made out of that date, referring to the contract, and registered in the Common Register of Session, *anno* 1717, and in 1715 the son was infeft, the sasine bearing in general, “under the burdens and provisions mentioned in the contract, and contained in the list,” and in 1719 the son sold the estate. The Lords found the childrens provisions, though contained in that list, were not real burdens, chiefly because the list of debt and provisions was neither inserted in the disposition, nor registered in the Register of Sasines, but only in the books of Session. (See DICT. No. 70. p. 10,247.)

See NOTES.