

on the process, and Sir Robert Colt, who managed it, was dead. The Lords opened this decreet, and reponed Sir Adam's creditors against it.

Then they craved allowance, amongst many other articles, of £1200, paid Culterallars, as due to the Lady Megetland, his wife, by Rig.

ALLEGED,—It was an heritable sum, and the *jus mariti* would not carry it. ANSWERED,—He had a general disposition from her. REPLIED,—Its date is after this payment. DUPLIED,—It accresces to sustain the *bona fide* payment and discharge; and there is none to quarrel it.

The Lords inclined to allow this article.

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1695. *January 22.* CARNEGIE of PHINEVEN *against* The EARL of PANMUIR and MR HARRY MAUL, his Brother.

THIS was a reduction of an assignation, granted by the deceased Mrs Mary Maul, of her portion, to Phineven, and of his decreet *in foro* reducing Strathmore's assignation, and declaring his right to the sum, at Panmuir's instance, as having got a posterior right thereto from Mrs Mary. The great difficulty was, how to get over the *res judicata*; and the Lords having read the decreet, they found only compearance made for Strathmore, and none for her; and, therefore, declared it was in absence *quoad* her and her posterior assignee, notwithstanding he produced a reduction raised in her name. And so, Panmuir being reponed, he ALLEGED, The assignation to Phineven was but of the nature of a substitution, failing heirs of her own body; and she was still fiar; and he had, after that right, counted to her as factor, and so passed from it; and she had power to alter; and it was on the matter but *donatio mortis causa*; and was granted by her in her minority; and her curators consenting to it were Phineven's father and brother. But he was ordained to be farther heard against these grounds. It was queried, Whether or not Mrs Mary's creditors could not have affected this sum, or if she might have called for a part of it, in case of necessity, by sickness or the like, it not being for onerous causes.

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1695. *January 23.* SIR DONALD BAYN of TULLOCH *against* NISBET of DIRLETON and SIR WILLIAM BRUCE.

[See the prior part of this case, page 128 of this volume.]

CROCERIG reported Sir Donald Bayn of Tulloch against Nisbet of Dirleton and Sir William Bruce, about the patrons of Mr John Bain of Pitcairly's two mortifications of burses, the one to the college of Edinburgh and the other to St Andrew's. The Lords had found, Though it was ungenteel, *et contra bonos mores*, to fill up their own names as patrons, yet it was lawful in itself. Tulloch now repeated his reduction, that the writ, empowering them to nominate the patrons of these mortifications, was granted by Pitcairly *in lecto*.

ANSWERED,—You have ratified the tailyie and mortification, and so can never quarrel it now. REPLIED,—This commission to name the patrons is posterior to my ratification, and so can never fall under the same.

DUPLIED,—Though it cannot expressly comprehend it, yet, you having ratified the mortification, you have consequently ratified all that followed thereupon.

The Lords found this ratification could not hinder Tulloch, nor Pitcairly's nearest heirs, whose right Tulloch had acquired, to quarrel the same, as done on deathbed. Another reason of reduction was, that the said commission was never delivered in Pitcairly's lifetime.

The Lords found it needed no delivery; because it bore to take effect after his decease, and so was of a testamentary nature. *Vol. I. Page 662.*

1695. *January 24.* ROBERT CRAIG of RICcarton *against* DAVID KENNEDY of BELLIECULTRA.

ARBRUCHEL reported Robert Craig of Riccarton, advocate, against David Kennedy of Belliecultra in Ireland, for repetition of some articles allowed him in a discharge, when the pursuer's brother and he counted for his intromissions with the rents of his lands in Ireland, as being *indebite solutum*. The defence was, *Actor sequitur forum rei*; which, in law, is *quadruplex*,—*viz. originis, domicilii, rei sitæ, et contractus*; none of which meet here.

ANSWERED,—The brocard is true, but has many exceptions, whereof this is one, *Si reus foro renuntiaverit, l. 65, D. de Judic.* Which this defender had done, by making his accounts in Scotland, and getting his discharges here; so it became *locus contractus*: likeas, he was in Scotland when cited on this process.

The Lords found the defender not convenable before them, unless the pursuer could instruct that he had effects in Scotland, either heritage or moveables, which he could attach by diligence. And, in Murray of Broughton's case, where the Lords found themselves competent judges to an Irish estate, it was because he had also an estate in Scotland. Riccarton's design, if he had obtained a decret, was to have watched him when he came to Scotland about his trade, and then to have attached him. Some thought, as to the discharges in Scotland, his counting here founded the jurisdiction; but the plurality assoilvied him, as not liable to answer here. *Vol. I. Page 662.*

1695. *January 25.* OLIPHANT of CONDIE *against* BAILIE CHARTERIS.

OLIPHANT of Condie against Bailie Charteris, as come in Margaret Crawford's right. The Lords found the reservation of the reduction in the former decret did not meet the Bailie, a singular successor, as the *supersedere* meant not a discharge. *Vol. I. Page 663.*