

her death, if she was truly in straits, and of the said Miller his miscarriage to her, or if she was only, through misrepresentations, irritated against him. And the probaton being advised, little appeared of her being reduced to urgent necessity, but, on the contrary, that she had money lying beside her at the time of her death : But it was proven that Miller had served inhibition against her on his disposition, and raised arrestment on sundry of her effects. And it was contended for Rainy, that she was the best judge of her own necessities ; and having asserted it under her hand, it was a sufficient ground of revocation : Likeas, he had forfeited her favour by straitening her with the foresaid scandalous and indiscreet diligences of inhibition and arrestment.

ANSWERED,—Her assertion, elicited from her by calumnies, can be no probaton ; and *Mrs Mary Mauld* having disposed her portion to *Mr James Carnegie of Phineven*, her cousin, with a reservation of liferent, and a power of disposal on it in case of necessity, and having made a posterior right of it to the *Earl of Panmuir*, the Lords, in 1678, preferred Phineven, and found she could not *ad libitum* revoke it. And *l. ult. C. de Revoc. Donat.* lays down the solid grounds on which such donations may be retracted upon atrocious injuries ; but the using diligence against the donant is none of them : and what he did was from no disrespect to his aunt, but to prevent her being imposed on, and to secure his own right.

The Lords reduced the first disposition given to Miller. Against which he reclaimed by a petition ; which the Lords declared they would farther consider, how far ingratitude with us may be a relevant reason of reduction of a gratuitous right.

*Vol. II. Page 90.*

1700. *February 20.* MARJORY FORBES, Lady Drum, *against* ROBERT KEITH of LENTUSH.

MR Robert Keith of Lentush having proposed a marriage betwixt the late Alexander Irving of Drum, and Marjory Forbes, daughter to Auchreidy ; and for the more secrecy, and as Drum was fickle and changeable, he, in 1688, supplies the place of a minister, and celebrates the marriage himself ; but, to secure him against all damage, (as he foresaw that he would lose his place as one of the Regents of the College of Aberdeen, as actually he did,) he took a bond from her, the day before the marriage, for £10,000 Scots. The said Marjory, now Lady Dowager of Drum, raises a reduction of that bond on thir three reasons, *Imo*, That, by ocular inspection, the bond has been originally blank, not only in the creditor's name, (wherein Sir Alexander Forbes of Tolquhon is now filled up for Lentush's behoof,) but even in the sum, term of payment and penalty, and is filled up with a different hand and other ink ; and therefore, being after the Act of Parliament 1681, it is null, not mentioning who filled up these blanks ; neither is it sufficient that the writer of the body of the bond is named, seeing these substantial parts of the bond are visibly writ by another hand ; and therefore, not being filled up at the date of the subscribing, it must be presumed to have been blank at her marriage, (which was that very next day,) and could not be filled up then, being *vestita viro*, and capable to grant no bond. See the like presumption sustained by the Lords, *15th January 1670, Lady Lucia Hamilton*

against *the Creditors of Mountcastle*. *2do*, Mr Robert's wife being the said Lady Drum's aunt, he was her uncle-in-law, and so he acted *contra bonos mores* to make merchandize of her; and, both by duty and relation, was bound to promote her marriage without a bribe; and the Lords have found a step-father ought to take nothing from a step-daughter's husband for making the marriage; and see the like decided in the case of a Tutory, *5th March 1629, White against Douglas*. *3tio*, The bond should be reduced; because, in a communing betwixt them, he declared he would deliver it up, and refer his gratuity to friends; and, instead thereof, gave her a copy to burn, and kept up the principal bond.

ANSWERED to the *first*, There is nothing more ordinary than to have blanks in bonds, and to fill them up at delivery; and it would endanger many writs if that were sustained to be a nullity, that it appears the writ has been *ab initio* blank; so it can only be proven, by the defender's oath, that it was not filled up till after her marriage. To the *second*, It cannot be denied that, as a woman may grant a bond, if perfected before the marriage, so a party may receive a *proveneticum* and gratuity for procuring a profitable marriage; and the Lords did lately sustain the same to *Sir John Cochran against the Earl of Buchan*. As to the *third*, Being a circumvention, the same is denied as calumnious and false.

REPLIED,—Whatever a stranger might take, he who was a relation could not take so exorbitant a reward on the very brink of the marriage; and what was decreed to Sir John Cochran was not a gratuity, but his real debursed expenses.

The Lords ordained the case to be reasoned in their own presence.

*Vol. II. Page 90.*

1700. *February 21. JOHN MURRAY against SIR PATRICK AIKENHEAD'S BAIRNS.*

IN a case between Mr John Murray and Sir Patrick Aikenhead's Bairns, a horning being given in by mistake to be registrate, when the debtor had paid and satisfied it; the Lords granted warrant to the Clerk, (seeing it was only noted in the minute-book, and not yet recorded, being quarrelled *de recenti*;) to score it in the minute-book, and not to registrate it, but in place thereof to record this bill and deliverance for his warrant, seeing the denunciation was preposterous and unwarrantable. And this was done to secure him against the certification of the 14th Act of Parliament 1693, importing deprivation: though this takes away the *jus quæsitum fisco*; and the regular method is to relax and take the gift of their own escheat; yet, when the diligence appears evidently to have been illegal, and is not recorded, the Lords have been in use to relieve the subjects of the expensive way of passing a gift through the seals.

*Vol. II. Page 91.*

1700. *February 24. LADY SUSANNA LORT against SIR HUGH CAMPBELL of CALDER.*

By articles and indentures of marriage passed in England, after their form, in