

question of the truth of the subscription, by the witnesses disowning the same : so that this renunciation, being only to be considered as an unsubscribed draught, and two draughts being offered, the charger was ever allowed to make his own special charge.

Which the Lords sustained ; and allowed the suspenders to object.

The suspenders OBJECTED, That, by the charger's draught, the Lord Yester was required, not only to consent to his lady's renunciation, who is fiar, but to take burden for her ; which, though oft-times it be in writs of consent, yet, without express consent, the husband is not obliged to take burden for his wife ; whereby he would become surety for all her deeds prejudicial to the renunciation, though they were done after his death.

It was ANSWERED, That the clause of taking burden, being ordinary, ought to be inserted ; and, that the charger was willing that it should be declared, that it should import no more but the authorising my lady, as her husband.

The Lords ordained the clause to be thus expressed :—“ That my lady, who is fiar, should renounce and resign, with consent of my lord, as husband, authorising her ; and he, for himself, for any right he hath by the disposition or contract.

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1676. *January 26.* SIR ROBERT DRUMMOND *against* LAWRIE of BLACKWOOD and GEORGE HAMILTON.

SIR Robert Drummond disposed his estate of Meidhope to Sir John Drummond for 33,000 merks, and assigned him to sums extending to 20,000 merks, redeemable in his own time only, and bearing this clause,—“ That if the right should become irredeemable, Sir John should be obliged to pay 3000 merks to any person Sir Robert, or his lady should leave the same to in legacy, the estate being freed of debts and burdens.” Sir Robert assigned this sum of 3000 merks to his lady, and she transfers the same to George Hamilton ; Sir John having given in several debts to affect the lands of Scotstoun, disposed by Sir Robert, to him, upon deathbed.

It was ALLEGED by Lawrie of Blackwood, who had adjudged the interest of Sir Robert's apparent heir, in the lands of Scotstoun, That Sir John behoved to deduce the 3000 merks which Sir Robert had power to legate ; and had exercised the faculty by this assignation.

It was ANSWERED for George Hamilton, That he had the only right to this 3000 merks ; for, albeit it be provided, That Sir Robert may leave it in legacy, which imports, that he may do it in testament, or on deathbed, yet, he is the fiar of the sum ; and might dispose of it by assignation, as he hath done. And as to the creditors, they neither have, nor can affect this sum, before it was transmitted from Sir Robert, by his assignation ; but seeing, Sir John, who hath right to all the debts, and had his option to insist against Sir Robert's estate, real or personal, but hath affected Scotstoun therewith, he cannot be forced to quarrel Sir Robert's assignation ; nor hath he any ground to quarrel the same ; Sir Robert's whole debts being satisfied otherwise, and he no bankrupt nor insolvent. And albeit the assignation were on deathbed, yet, by the conception of the clause, “ that it might have been by way of legacy,” it is sufficient : and the

apparent heir, to whose behoof Blackwood hath adjudged, would be obliged to warrant Sir Robert's assignation.

It was REPLIED, That the assignation, being upon deathbed, is, in effect, a legacy, which can never take effect but *deductis debitis*.

The Lords found, That Hamilton had the best right to the sum, by Sir Robert's assignation; and that Sir John, who was the only creditor, could not be compelled, or had no interest to quarrel the same.

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1676. *January 27.* The MASONS and WRIGHTS of EDINBURGH *against* The SIEVE-WRIGHTS, UPHOLSTERERS, and PLUMBERS.

IN the mutual declarators between the masons and wrights, and other trades incorporated with them, the Lords did, upon the 15th day of December last, find, That five of these trades, that were anciently incorporated before the set, were capable of being elected deacons to the wrights and masons; but the sieve-wrights, upholsterers, and plumbers, being received into that corporation since the year 1646, long after the sett, they appointed the parties to be heard as to them.

It was ALLEGED for the wrights and masons, That these trades were not in the like case with the former; because they were, after the king's decret-arbitral, settling the constitution and government of the town; which bears expressly, that the deacons should be expert men in their own crafts: but it cannot be pretended that these three petty trades could be expert either in the crafts of wrights or masons, or any of the other trades incorporated before the set; and it were a great detriment to the government of the town, that persons of so mean employment might be capable to be deacons, and so capable of the government of the town; nor could they have skill to oversee the other trades: and their admission, which is produced, limits them to particulars; so that they are incapable of any further, and consequently cannot be thought to be admitted to the highest capacity of that incorporation: for all free donations are strictly to be interpreted, especially privileges; neither could any new trade be assumed after the sett, without consent of the king and the town.

It was ANSWERED, That albeit the masons and wrights, and their fraternity, could not incorporate any trade without consent of the town; yet it could not be denied but that such trades as, by posterior custom, did arise by division of the trades formerly incorporated, could not be excluded from all the privileges thereof: for if, by time and custom, the wright craft were divided, and a distinct craft of coachmakers, cabinmakers, or turners made, they were all truly wrights, though their privileges were not extended to all manufacturers in timber. And, in like manner, cutters of marble, or carvers of stone, though they could do nothing to laying, were yet truly *lithotomi* or masons: and so could not be excluded from all the privileges of the masons: and, therefore, these three trades, being all workers in timber, are wrights, and cannot be excluded from all their privileges: for who can refuse that a sieve-wright is a wright, and an upholsterer a maker of chairs, chests, and coffers: And plumbers, though they work in lead, cannot work unless they be wrights; but much more when