

they allowed him to depone what was his meaning ; whether his sons should succeed to this portion of their sister's, in case of her being married, or *quandocunque* ; for though she had disposed it by her contract, yet, if the marriage had dissolved within the year, it would have devolved to the substitutes.—See *Durie*, 17th January 1665, *Edgar* ; and 22d February 1677, *Belshes*.

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1694. February 7. LADY CATHARINE and MARGARET BOYDS against The EARL of KILMARNOCK, their Nephew.

THE LORDS sustained their exhibition for production of the bond of provision given by their brother ; and, *medio tempore*, during the dependence of the process, allowed the annual rent of the sums therein contained, for an aliment ; without determining the general point, How far elder brothers are bound, *jure naturæ*, to aliment their younger brothers or sisters. And, in the Earl's reduction, it will occur to be debated, how far thir bonds of provisions may be quarrelled as granted *in lecto*, seeing the granter's father had a faculty to burden the lands, which he made no use of ; and if it was not so personal, that his son, the last Earl, could not make it the onerous cause of granting thir bonds.

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1694. January 3 and February 7. SIR ROBERT GORDON of GORDONSTON against MARY STEWART, Relict of Commissary Wood.

HALTON reported a bill of suspension presented by Commissary Wood's relict against Sir Robert Gordon of Gordonston, and Major James Wood, cautioner in a former suspension, wherein she offered to pay the debt, providing the charger would assign her to Major Wood's bond of cautionry ; which Sir Robert refused. As also, compearance is made for the Major, who ALLEGED they could not recur against him, because her husband had not only given a new bond, after his becoming cautioner for him, but also she herself had granted a bond of corroboration, since her widowity, for the debt, without any relation to the Major's cautionry, or any clause, that, on payment, they shall be assigned to all the security that was already taken for the debt. And the question was, Whether it accresced. For, in the case of more suspensions, it was thought, that the cautioner in the first suspension would be bound to relieve the cautioner in the second ; and he behoved to be first discussed ; and the second was only *subsidiariè* liable, and it is likely would not have engaged, had not he seen that sufficient caution was found before. But it was urged, That the granting of a bond of corroboration differed from a cautioner in a second suspension, seeing he became principal *correus*, and had relief only against the debtor, and not against his cautioner. And it was asked, if the cautioner might not have given a gratuitous discharge, to Major Wood, of his cautionry ; and it was yielded he might, any time before taking the bond of corroboration ; but, after that, it was

contended there was a *jus quæsitum* to the new obligant, which the creditor could not prejudge.

The Lords thought the point of moment, Whether or not all the accessory securities formerly given for the debt accresced to those who afterwards became bound for it, though not expressed. They waved the decision, but allowed the suspension to pass, if the charger would not consent to discuss summarily : for it appeared very unfavourable on the relict's part, seeing she was intromitter with her husband's goods, and so bound to relieve the Major, his cautioner, on whom she was seeking to turn over the debt. But that was *in causa* ; whereas the present question was, If they should pass the bill. *Vol. I. Page 587.*

*February 7.*—The Lords decided the charge at Sir Robert Gordon of Gordonston's instance, against Mary Stewart, relict of Commissary Wood, in Caithness, on Halton's report ; and found, Gordonston was not bound to assign her to Major Wood's bond of cautionry for her husband in the first suspension, seeing the bond of corroboration she had given to Gordonston, since her husband's death, was not relative to that bond of cautionry, nor an accessory security thereto, in contemplation whereof she had engaged. Some urged, that Gordonston had componed with Major Wood, and the charge was for Wood's behoof ; and so, though it was not competent against Gordonston, yet it might meet Major Wood. But the Lords decided *ut supra*. *Vol. I. Page 604.*

1694. *February 8.* JAMES SMITH and ALLAN and GRIER *against* CHRISTIAN BEG, Relict of ——— GRIER.

RANKIELER reported James Smith, donatar to Grier's escheat, and Allan and Grier, against Christian Beg, relict of ——— Grier. The Lords found the sum of 8000 merks, in Sir Robert Laurie of Maxwelton's hands, was heritable, and fell not under the escheat ; for, though it was in trust and under a backbond, yet it did not render it personal, nor alter the nature of the right. But found the bygone annualrents, which the rebel himself would have had, fell to the donatar. But found, if the two merchants, lesed by their two apprentices, proved that they had stolen goods from them, either by the probation already adduced before the Bailies of Edinburgh or otherwise, then the merchants might affect this heritable sum, by adjudging or arresting, for reparation of their damage ; and they would allow them their *juramentum in litem* in this case, as well as in a spuilyie. And, as to the wife Christian Beg's interest, found that the assignation given to the said sum by Martin Beg, her brother, was not to be regarded ; seeing he had emitted a prior declaration that his name was filled up in the bond merely in trust for Grier's behoof, and he had no interest in it ; which was only to be credited, and not his last assignation. *Vol. I. Page 604.*

1694. *February 8.* THE TRADES of the CANONGATE *against* The HERITORS of BROUGHTON, &c.

THE Trades of the Canongate, against the Heritors of Broughton and the