

nounce ;—and accordingly, 28th November, the Lords found that the trustees might be heard, notwithstanding the decret. Lord Advocate reclaimed, and insisted that it was a decret *in foro*, the cause fully debated, and no more could have been said were Cherrietrees still alive ; that by the regulations a party compearing cannot pass from his compearance, &c. But I observed, that in the question whether it was a decret *in foro*, the argument would have been as strong if Cherrietrees had died before any debate *in causa* after or even during the debate about the no-processes ; that if any new defence occurred to Cherrietrees, it was competent any time before decret, but if it was a decret *in foro*, the trustees were barred by competent and omitted ; that probably the Court would not alter their opinion if nothing new was pleaded that was not in the former informations, (though in fact they never were reported by me,) but I thought they could not be barred by the decret from pleading any thing, for that it was not a decret *in foro*. And the petition was refused *nem. con.* 12th December 1752.

13th June 1753, Margaret Morison, an infant about 15 years of age, having succeeded to her uncle in the lands of Maison-dieu, and being an infant of a sickly constitution, disponded them to Murray of Cherrietrees, and died in two or three weeks. Professor Gowdie, her uncle, by her mother, applied to the Crown, and obtained a gift of *ultimus hæres*, and pursued reduction of Cherrietrees's disposition on death-bed and minority, which came before me first, as is marked *supra*, 12th December 1752. The defence is now taken up by Cherrietrees's trustees, who alleged, 1st, that though this was called a right as *ultimus hæres*, yet in reality it was no succession, the King was no heir, but *quasi hæres*, and had right to the estate only as *bona vacantia*, and therefore can neither reduce on death-bed nor on minority. 2^{dly}, That the gift was obtained by subreption or obreption. On this report, we found unanimously, that the objection of death-bed was competent to the Crown's donator ; and one consideration that moved me was, by our most ancient law, feudal rights could not be transmitted without consent of the superior, and therefore neither by testament nor on death-bed, not even in prejudice of the King. But we were more doubtful as to the reason of minority, and therefore did not decide it. And we found the qualifications of subreption or obreption condescended on not sufficient ; but in this last Kilkerran differed. Another point was also stirred at the report, by the Lord Advocate, that the objection of subreption or obreption was not competent to one who derived no right and had no gift from the Crown ; but as this point had not been pleaded before the Ordinary, nor reported, we did not decide it. 31st July Adhered unanimously.

No. 27. 1753, Aug. 8. WITHERS *against* HARLEY.

WITHERS petitioned the Court to advise his cause, that was enrolled in both our ordinary and concluded cause rolls, out of its course, because if it waited its course of the roll, he was in hazard to lose his debt, Harley being *vergens ad inopiam*. I objected the 11th and 12th articles of the regulations 1672, which we read. But notwithstanding thereof the Court granted the petition, and called and advised the cause.