

of the former. Abraham Rowan, the son of James's elder brother, and heir of conquest, brought a reduction of these deeds, and contended, that he had right to this debt, because the first disposition was revoked by the last; and the last was reducible at his instance, *ex capite lecti*. The defence chiefly insisted on was, that the first deed was not expressly revoked by the last; and therefore, although the last deed should be taken out of the way, the first would still subsist; "and so the Lords found, (22d November 1775;) they held a virtual revocation of the first not sufficient, and assoilyied the defenders." And the decision was well founded; for, if a death-bed deed contains both a disposition and revocation, there may be some reason for maintaining, that, though the disposition be set aside, the revocation may subsist; because they are distinct; *et utile per inutile non vitiatur*; but, when the death-bed deed contains no revocation, and is cut down on the head of death-bed, it cannot be maintained, with plausibility, that it ought to subsist as a revocation.

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## DECLINATOR.

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1776. July 26. WILLIAM DALGAIKNS *against* ———.

WILLIAM Dalgairns, tacksman of the Mills of Kiethick, belonging to the Lord Privy Seal, pursued several of the neighbouring tenants for abstracted multures. The process came, by suspension of a sentence of the Sheriff of Perth, before Lord Stonefield, who declined himself on account of his connexion with the Privy Seal, proprietor of the mill. The Privy Seal was no party called to the process. The Lords, 26th July 1776, repelled the declinator as not a legal one.

Being related to either of the parties, as an uncle, by affinity, is no declinator. Repelled in the case of *Lord Coalston* as uncle to *Mrs Caddell*. In the case of *Lord Gardenstone*, in the process *Irvine of Drum* against *Earl of Aberdeen*, June 1776: Irvine had married his niece. And in the case of *Lord Covington*, in the process *Moray of Abercairney* against *M'Namara*, 27th July 1776.

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1774. December 2. DOUGLAS, HERON, and COMPANY *against* EARL of GALLOWAY.

A CAUSE, at the instance of Douglas, Heron, and Company against the Earl of Galloway, having come in course before Lord Hailes, Ordinary in the Outer-house; his Lordship, not adverting that Sir Adam Ferguson, his brother-in-law, was a known member of that Company, assoilyied the defender, found expenses due, and decerned, (23d July 1774.) A representation being given in, the