repetition against them upon the warrandice of their several dispositions to him. And the Lords now altered their former interlocutor, finding she had immediate access against the Duke for that part of the price whereto she was preferred; and found the Duke was *in bona fide* to pay: seeing he had raised a multiple-poinding, and was preferred for his own debt; and the rest of the creditors were ranked, and he had paid them conform to their ranking, and this decreet was not quarrelled for some time. And the case of *Montgomery* contra *William Wallace*, 19*th July* 1662, was cited: and the Lords remembered, that last winter, in *James Reddock's* pursuit *contra* the *Lady Rothes*, the Lords sustained voluntary payments, in the terms of their back-bond, as *bona fide* made.

Vol. I. Page 601.

1694. *February* 6. THOMAS OGILVIE of CORDAUCH *against* JAMES OGILVIE of NEWTON of BELLERTY and ALEXANDER OGILVIE of POOL.

THIS was a reduction of a disposition, on this ground, That it was only conditional, by one brother to another, without adequate onerous causes, and only to take effect if the disponer should die without children; and so the conception of the clause was alleged to be suspensive; that the dominion and property was not conveyed till it appeared that the condition did not exist; and being only of the nature of a tailyie, and destination of a substitution, it did not so divest the disponer but he might contract debt, and thereafter do other rational deeds to affect these lands. But the Lords, having read and considered the disposition, they found it conceived in resolutive terms, *viz.* that if the disponer should have children of his own body, then the disposition should be void and null; and found any debt he contracted afterwards could not affect that land; and therefore reduced the adjudications led thereon for the same: though sundry thought it was not the disponer's meaning so to incapacitate himself, but only the ignorance of the writer, who strained it in that manner, not knowing the difference betwixt the two clauses. *Vol. I. Page* 602.

1694. *February* 6. BLAIR and ISOBEL MITCHELL *against* PATRICK ANDERSON.

THE case between Blair and Isobel Mitchell, his assignee, against Patrick Anderson in Perth, was reported. The Lords found the clause in the contract of marriage, providing all goods, moveable and immoveable, to the longest liver, comprehended the heritable bond of £100 Scots, whereupon infeftment had followed; seeing, with us, sums heritably secured were reputed *inter immobilia;* and we had not received that distinction made in the common law, of three species, *bona mobilia et immobilia, et nomina debitorum.* And as to the *second* defence, That she behoved to be served heir of provision to her husband ere she could have right to the sum,—the Lords found she needed not; because the words ran that it should fall and be disposed of by the survivor. But, seeing the debtor was the defunct's nephew, and nearest of kin, the Lords allowed him either to give her a precept of *clare constat,* whereon she might be infeft,