

of Livingston, with the burden of debts (other than the said L.1000 sterling) and the destination of succession contained in it, Sir David was not prejudged by the death-bed deed, and therefore had no right on the head of death-bed to quarrel it, and the heir could not approbate and reprobate it; and therefore if a disposition were made *in liege poustie* to a stranger, reserving power to revoke, and the granter should on death-bed dispose the same subject to another stranger and revoke the former disposition, that revocation would only operate in favours of the last disponee to support his disposition, but not in favours of the heir at law to reduce the last disposition on death-bed, and the first disposition as revoked by the last one. This cause was heard in presence yesterday and advised this day, when the Lords repelled the defence that Sir David was barred by the disposition 1741 to reduce the disposition 1746, found that deed 1741 revoked *in toto* by the deed 1746, found the reasons of reduction of the deed 1746 relevant and proved, and therefore reduced it *in toto, renit.* Drummore, Kilkerran, Haining, Strichen, *et me*, (then in the chair.) For the interlocutor were Minto, Arniston, Dun, Monzie, Murkle, Tinwald, Shewalton.—10th June 1748 Adhered by Arniston President's casting vote;—but appealed, and agreed by giving Whitefoord L.2000.—11th December 1747.

EJECTION.

No. 1. 1739, July 13. PRINGLE *against* EARL HOME.

THE Lords adhered to their former interlocutor of 12th June, in which the only thing remarkable was an objection against the execution of a decret of removing before the Sheriff, that next day after the decret the tenant Pringle was ejected without any charge on the decret, which the Lords repelled.

ESCHEAT.

No. 1. 1739, Jan. 13. CREDITORS of SIR DAVID BAIRD *against* ERSKINE.

THIS case was argued at the Bar and on the Bench two full days, upon the question, Whether a creditor obtaining a gift of escheat fallen by his own diligence, and granting back-bond to denude after payment in favours of other creditors be liable in any diligence, and in what? (in which Lord Arniston having declined himself being one of the creditors in the back-bond, pleaded the cause about one hour and a half.) The Lords generally inclined to think, that a donatar would not be liable for exact diligence, that is neither for *culpa levissima* nor *culpa levis*, but that such donatar is liable for dole or *culpa lata*, that is supine negligence, and in so far differed from the decision observed by Lord Harcarse in

February 1686, betwixt Creditors of Shenés and B. Hamilton.* But they did not incline to give a general interlocutor determining an abstract relevancy, and remitted therefore to me to enquire and report what diligence was done, which I did this morning;—and upon report the Lords unanimously found no such negligence as to make the defender liable for the arrears in question.

EXECUTION.

No. 1. 1734, July 22. *A. against B.*

IN a removing reported by Lord Newhall without Informations, (I know not the parties) the Lords found a warning executed at a dwelling-house bearing to be lawfully executed but not specifying the manner to be null; 2dly, They would not allow the execution to be amended even though the messenger should abide by.

No. 2. 1736, July 30. NISBET of Dirleton *against HIS FACTOR, &c.*

THE Lords sustained the objection to the execution, that it did not bear that the copies delivered to the servants were delivered at the dwelling-house of the masters.

No. 3. 1738, Nov. 28. ARCHIBALD M'LACHLAN'S CASE.

THE Lords were greatly divided in this matter. They had by a mistake appointed M'Lachlan to stand at a post at the Cross the 29th instant, which was within eight days of the sentence contrary to the act *Stio Regis*. Some of us thought that we could appoint a new day for execution, as is daily practised in case of reprieves or escapes out of prison, and once was done at a Justice-Air by Royston in a sentence of death on this very act, at least the preceding one, and the President seemed also to come into this opinion. Others were as clear that the Lords could not appoint any other day for execution, nor commute the sentence even at the suit of the party, particularly Drummore. Others doubted of our powers to alter the day, but were for commuting the sentence, as Arniston. Upon the whole it was agreed, and carried upon the narrative of the act of Parliament to find that the sentence could not be executed on the 29th, and therefore to discharge the Magistrates to execute the same.

No. 4. 1753, Aug. 7. AUCHINCLOSS, &c. *Supplicants.*

A SHERIFF OFFICER and two Commissary officers had made a false execution, the first as officer the other two as witnesses; found that the copy was not delivered to the party in presence of the witnesses;—and they were on their petition only put on the pillory at Glasgow, because of their ingenuous confession.

* Dict. No. 25. p. 3490.