No 181. produced a renunciation by the said Isobel of the apprising in favour of Philorth, and a back-bond by Philorth, bearing, that he stood in the right of the apprising of the estate of Caskiben by Dr Guild, and obliging himself to apply the benefit thereof, and of all subsequent rights he should acquire of the estate of Caskiben, for the use and behoof of Caskiben's eldest son, and for the weal and standing of the house; and therefore, Cochran's apprising acquired thereafter by Philorth being to the behoof of Caskiben's eldest son, who was *in familia*, and having no means or estate to acquire the same, law presumes that it was acquired by the father's means, which the Lords have ordinarily sustained, and declared estates so acquired subject to the father's debt, by apprising or adjudication, as if it stood in the father's person; so that if Cochran's apprising be declared to be in the same case as if it were in Caskiben's person, who was principal debtor of the sum apprised for, the apprising would be extinct; for it is without doubt, that apprisings are not like other infeftments requiring resignation and new infeftment; but whatever way they be satisfied, by intromission or payment, they are extinct *ipso facto*. It was *answered*, That whatever hath been extended in favour of creditors, yet this presumption was never sustained against the superior. It was *replied*, *Multo magis* against a donatar; for if the superior were craving a marriage by the death of Caskiben or Tolquhon, upon Isobel Cochran's apprising, the superior replying upon satisfaction by the means of the principal debtor, he would recover the marriage of the debtor's heir; and therefore cannot justly claim the marriage of both the debtor and the cautioners upon an apprising extinct by satisfaction.

The Lords found the defence relevant, that Philorth had right to the apprising, and declared it to the behoof of the principal debtor's eldest son, while in his family, which was presumed to be upon payment by his father.

Fol. Dic. v. 2. p. 148. Stair, v. 2. 533.

No 182. Where a party had disponed his estate, to free himself from the rigour of the law regarding field conventicles, found he might cancel the disposition, the cause of granting it being done away.

1706. *July* 26. Lady Bradisholm *against* James Muirhead of Bradisholm.

Rose Fincham, Lady Bradisholm, and her son, pursue James Muirhead elder of Bradisholm, her father-in-law, for exhibition of a disposition made by him in 1686, in favour of his deceased son, her husband, and a sasine following thereon; and having referred the having to his oath, he deponed, That being imprisoned in the late times, and not taking the test, he was advised by his lawyers to make a disposition of his estate, both fee and liferent, in favour of his eldest son, a boy then of twelve years old, for preventing all hazard, and that sasine was taken thereupon, but never registered; and afterwards, King James VII. not resolving to press the test, he retired the same, and, after search,

cannot find them; but his wife tells him, that she had burnt them, as no more useful, being only done to serve a turn, and divert a storm, which blew over. This oath coming to be advised, the Lady's procurators repeated a declarator, that there being once a *jus quæsitum* to young Bradisholm by that disposition and sasine, which makes a complete right, it could not be warrantably cancelled afterwards; and though it was not registered, and so could not militate against third parties and singular successors, yet it stood always good against the granter; and he could not lawfully destroy it, but it must be reputed as extant against him, *pro possessore habetur, qui dolo desiit possidere.* *Answered*, This right given to the son was never intended for a permanent durable right, but only extorted by the rigour and severity of these times; and that ceasing, *cessat effectus:* for, suppose the French dragoons caused a Hugonet dispone his estate, if the impression of fear go off, will any say the disposition stands? neither was it ever a delivered evident; and so cannot be pretended to have been fraudulently put away. *Replied*, If Bradisholm had disponed his estate to a stranger in trust, to save him against rigorous laws then urged, he might have craved to be reponed; but this was to his own son in the natural channel, who was *alioqui successurus*, and so more favourable. The question being stated, Whether fraudulently put away, or warrantably destroyed? the LORDS found, The disposition being only *ad specialem effectum*, which ceased, he might warrantably cancel it, the delivery and consummation of the deed not being proved. No 182.

1707. *July* 12.—THE cause mentioned 26th July 1706, Lady Bradisholm younger *contra* the Laird, being heard this day, the LORDS adhered to their former interlocutor, finding Bradisholm might warrantably destroy the disposition made to her husband, his son. Whereupon the Lady gave in her appeal and protest, for remead of law, to the Court of Judicatory, come in place of the Parliament of Scotland by the articles of the Union. See APPENDIX.

Fountainhall, v. 2. p. 346. 381.

1717. *July* 6. JANET ROSS *against* BAIN of Tulloch.

No 183.
Bond of provision, by what means it becomes a *jus quæsitum* to the child.

SIR DONALD BAIN of Tulloch disponed his lands to his eldest son John, with the burden of his debts and children's provisions; and *de facta* took from him bonds of provision in name of his children. Janet Ross, grandchild by Elisabeth Bain, one of Sir Donald's daughters, pursued an action of exhibition of her mother's bond of provision, against Kenneth Bain, Sir Donald's second son and heir-male, containing a conclusion of payment, libelling, That the bond had been delivered to him by his father, for the said Elisabeth Bain's behoof;