

cross, go and dispone; which makes another doubt if that disposition be reducible.

See 14th June 1670, *Blackbaronie*; 20th February 1680, *Bothwell*; and *Wesembac. ad l. 133, de V. S. Dies termini non computantur in termino.*

*Vol. I. Page 46.*

#### ANENT ADVOCATIONS.

BALFOUR, in his *Pract. tit. Advocation*, observes, that litiscontestation stops advocation, and that it ought to be reduced, and not advocated. See 20th February 1680, *Aitken*. But, for eluding this, some raise a blank reduction of the Act of Litiscontestation, and repeat their reasons of advocation, as if they were reasons of reduction, and so get it received; whereas they should go on *in communi formá*, in discussing their reduction.

*Vol. I. Page 46.*

#### ANENT TAXATIONS.

TAXATIONS, ordinarily, by the style of the Acts of Parliament, or convention imposing them, expire, if not pursued for within three years; which is just, but has no place but where the Act provides it. See *Stair, tit. Prescription*.

*Vol. I. Page 46.*

#### ANENT LEGATARS.

LEGATARS, that cannot otherwise come by payment, have been advised to confirm a testament, and get themselves named executors *qua* legatars; which may afford a title to pursue as well as a confirmation *qua* executor-creditor.

*Vol. I. Page 46.*

#### CARSAN against MAXWELL.

IN Carsan and Maxwell's affair, ALLEGED, *1mo*, The principal sum is not arrestable, because infestment is taken, though not on it, yet upon the bond of corroboration. *2do*, The payments must be ascribed, first to exhaust the principal sum, which is *durior sors debitori*, it bearing annualrent, and not to exhaust the annualrents; and so the interest will be still due, and so arrestable. See 31st January 1671, *Telfer*.

*Vol. I. Page 47.*

#### ANENT the QUORUM of the LORDS.

THERE being but ten Lords, whereof one behoved to sit in the Outer-House; the fulness of the *quorum* was doubted, because of the 57th Act, Parl. 1537, appointing that, to a *quorum*, there shall be at least ten Lords, with the President or Chancellor, (for the four extraordinary Lords make no part of the *quorum*, so that five or six Lords with them could not act :) but custom hath prevailed since, that nine make a *quorum*, as being the major part *in numero im-*

*pari* of fifteen. If a sentence were pronounced, or advised and voted, by fewer than nine, (as I know several such done in the Lords' afternoon-meetings,) I think they may be quarrelled, and reduced, as pronounced *a non habentibus potestatem*; for, at most, they are but like a committee, and could only but prepare, and report against next day to the full number. But none has yet ventured to quarrel these decreets upon this nullity. *Vide 10th June 1677.*

*Vol. I. Page 48.*

1679. *June 4.* JAMES EUART *against* JANET CHAPMAN and HARY BROWN.

JAMES Euart, vintner, charges Janet Chapman, and Hary Brown her spouse, upon a bond granted by her before her marriage, for £200 Scots, as the balance of the account of her intromissions as taverner in running his wines. The husband suspends on this reason, That the bond was null, and could not militate against him, because, though it was granted by her before her marriage with him, yet it was after she was contracted, (which interpretatively is reputed to be done *stante matrimonio*,) and after the proclamation of the banns in the church, at which time she could contract no debt to affect him; as the Lords have oft found. And Dury tells it was so decided, *29th January 1633, Scot.*

REPLIED,—The husband must still be liable, because such crying in the church may be clandestine, and cannot put him *in mala fide*, nor a creditor know it. *2do*, The bond is homologated by partial payment. *N.B.*—If it be made by the wife, without her husband's knowledge, *non relevat* to bind the debt upon him. *3tio*, It was *in rem mariti versum*, because it is offered to be proven, that, with the said pursuer's money, she bought their household furniture. *4to*, The husband must here be liable, because it is not a bond for borrowed money, *contra S. C. Velleianum*, but depends on an antecedent cause, as being *institor* or *præposita tabernæ*, and she who has sold his wines and liquors, and received the price thereof. *5to*, It is offered to be proven they were proclaimed after the granting of this bond.

Thir four last seem relevant; but it may be asked whether the last is receivable against the husband, by way of reply, or if he must be pursued in an action to pay it. And, in both cases, the bond (though proceeding on an account, being *in æstro amoris*,) must be loosed, and they must count over again; in which count, the master stating a charge of her whole intromissions, she must discharge herself, or else the charge will be admitted to probation; in which case, since he permitted her to go out of his service, the practick of the Lords will not sustain it relevant to offer to prove by her oath, that she was intrusted with such a quantity of wines and other liquors, and sold and disposed thereof, (and here, in such a case as this, though she be clothed with a husband, yet her oath must be taken for clearing the debt,) and received the price; but it must also be referred to her oath *simul et semel*, that the same is yet resting owing, and unaccounted for by her: because it is presumed that master and taverner clear accounts, at least once a-week; and that he would not have suffered her to go out of his service, till she had paid him.

But this presumption militates but slenderly in Mr Ewart's case, because he