1687. *February*. JOHN CHANCELLOUR *against* MAJOR BAITMAN.

PROVOST Drummond having disponed his goods to Bailie Hamilton, after he had been charged with horning by Major Baitman; John Chancellour and others arrested, afterwards, the goods in the common debtor's shop, and in Hamilton's hands; and thereafter Baitman arrested also. Chancellour claimed preference, as being the first arrester. Alleged for Baitman, That the disposition was preferable to the arrestment used by Chancellour; which disposition, though reduced upon the act 1621, as *in fraudem* of Baitman's anterior charge, excludes all posterior diligences. Answered, That Baitman could found on the disposition, which is not in favours, and Bailie Hamilton does not oppose John Chancellour; so that his diligence of arrestment must be considered as if the disposition were passed from. The Lords preferred Baitman, unless Chancellour had grounds sufficient to reduce the said disposition.—*February* 1687. Thereafter this interlocutor was stopped. *Vide* No. 153, [Laurence Gellaty against Stuart, 3d February 1688;] and No. 439, [James Room against Robert Cleland, December 1687.]

Page 17, No. 91.

1687. *February*. ALEXANDER TURPIE *against* JAMES ARCHIBALD.

FOUND that a sum assigned in trust fell not under the cedent's *bona* at his decease, the assignation being intimated in his lifetime.

Page 24, No. 121.

1687. *February*. JOHN OGILVY *against* BROWN.

AN assignation, not intimated, sustained as a sufficient title to pursue reduction, *ex capite inhibitionis*, raised on the bond assigned, without necessity of a licence; but that the assignee should confirm before extracting.

Page 24, No. 120.

1687. *February*. LAW *against* ROBERT CURRIE.

DEBATED, If a debtor's being witness in an assignation to the debt be not an intimation *quoad* him, so as to hinder the subject assigned to fall *in bonis* of the cedent; but heritable bonds need no confirmation, though not intimated.

Page 24, No. 123.

1687. *February*. DAVID OSWALD *against* SOMERVEL and BOYD.

FOUND that a disposition, with warrandice, by a husband to his wife, *inter*

vivos, of all free goods he should have, the time of his decease, implied the burden of his debts; and that the clause, *the time of his decease*, did not make it *donatio mortis causa*.

Page 31, No. 146.

1687. *February*. The LAIRD of DUNDAS and CRAMOND *against* GEORGE DUNDAS.

THE Lords ordained a wadsetter to assign his wadset to a purchaser of the land and reversion, seeing he could condescend on a prejudice he was to sustain thereby.

Page 59, No. 249.

1687. *February*. CHARLES CHARTERS *against* ANDREW BARRY.

FOUND that a third appriser, within year and day of the second, and not of the first effectual apprising, could not come *in pari passu* with them.

Page 79, No. 324.

1687. *February*. GEORGE GELLAN *against* DAVID CORSAR.

A MAN having assigned to his father, by way of aliment, the sum in a bond formerly taken by him to his wife, in liferent, *stante matrimonio*, with whom he had made no contract;—in a competition, after his decease, betwixt his relict and father, it was alleged for the relict, That provisions, *stante matrimonio*, to wives having no contract, are not revokable as donations, marriage being an onerous cause. Answered, The husband is fiar in the bond, and might alter; 2. The bond doth not relate to the marriage, and wives have the legal provision of third and terce; and here the husband hath settled on his wife a large provision above what could have fallen to her by law; and, *in quantum* the liferent of the bond exceeds the legal provision, it is *donatio*. The Lords preferred the father during his life.

Page 99, No. 385.

1687. *February*. MURRAYS *against* MILLER.

A PERSON having poinded upon a decreet obtained before a baron court, the defender pursued a spuilyie before the sheriff of Lanark, who found the decreet of the baron court null, and decerned in the spuilyie; which decreet of spuilyie being suspended, the Lords found the sheriff, who is an inferior judge, could not