

estate, *viz.* 8000 merks due to him by Maxweltoun. Answered for Allan, By the Act 26, Parliament 1661, a party, pursuing a thief *usque ad sententiam*, ought to have satisfaction for his lost goods and his expenses. Replied, The sentence against a thief, in such a case, must be upon conviction; and declaring him fugitive is not sufficient. Duplied, The pursuer could do no more, and he did all that was requisite, having charged the thief, and led a pregnant probation in a precognition before the Council, which would have satisfied an inquest; and it was not his fault that the pannel was not convicted, seeing the Council let him out of prison upon caution. The Exchequer inclined to think, that being declared fugitive was not enough, and that the Act of Parliament required a conviction and verdict; but it being informed, that the sum in Maxweltoun's hand was also moveable, the vote was moved, and the L.300 allocated upon Maxweltoun's debt.

This should not be inserted among the decisions of the Session.

*Page 118, No. 441.*

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1691. *July.* The CREDITORS of COCKBURN of LANGTOUN *against* JOHN BOWER, &c.

A REASON of inhibition received in a ranking, by way of defence, without reduction.

*Page 172, No. 621.*

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1691. *July.* The CREDITORS of COCKBURN of LANGTOUN competing.

OLD Langtoun being obliged, in his son's contract of marriage, to give his son (who was infest in the fee, with the father's liferent of the whole,) access to the lands for 9000 merks yearly, for the entertainment of his future spouse and the family;—the Lords found the provision was real, and preferable to posterior real creditors, in so far as extended to a competent aliment to the lady, which they modified to 3000 during her husband's life; although it was not secured against creditors by any alimentary provision. But most part of the creditors consented.

*Page 171, No. 620.*

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1691. *July 8.* The CREDITORS of COCKBURN of LANGTOUN *against* HENRY SINCLAIR.

IN competition of confirmations which are consummated by seisin, the first appending of the seal to the charter regulates the preference, though the confirmation and charter in Exchequer be posterior, unless it appear that the keeper of the seal was *in mora* by an instrument taken against him, and the thing be quarrelled *de recenti*.

*Page 171, No. 618.*