

Regent, and Dean of Guild Crawford; though the contrary had been sustained in favours of Lady Lochend against Sir John St. Clair.

The Lords found this annuity, though innovated by a submission and decret arbitral, originally corresponded to the principal sum of 20,000 merks, and therefore ought to bear retention.

*Vol. I. page 534.*

1692. *December 21.* SIR ANDREW BALFOUR *against* WATSON of Etherny.

SIR ANDREW BALFOUR, Doctor of Medicine, against Watson of Etherny. This was a count and reckoning about the profits of a Caper, and the prize ships taken by her. The charge being constitute, and the expenses wared out on the Caper, and their loss by its being taken by the Hollanders, being proven only by one witness; the Lords inclined to think it probative now, after so long a time, he having been book-keeper and a common servant and trustee to them both.

*Vol. I. page 535.*

1692. *December 21.* JAMES INNES of Orton *against* WILLIAM FARQUHARSON.

JAMES INNES of Orton against William Farquharson, for payment of 2000 merks, which William's wife had left, having a special faculty in her contract of marriage to do the same. The Lords repelled the first defence, that it was null, being assigned without her husband's consent; for the Lords found his consent to the faculty authorized her sufficiently. As also repelled the second, that she and her husband had uplifted it out of the debtor's hand, and given a discharge of it; for the Lords found, that uplifting did not make it so moveable, as to fall under the husband's *jus mariti*, but it still remained heritable *quoad* the husband, and it was nothing but a change of debtors from one hand to another; and repelled also the third defence, that she renounced her faculty, because that was *donatio inter virum et uxorem*, and so revocable, and *de facto* revoked by her posterior assignation, whereby she exerced the faculty and power reserved to her.

*Vol. I. page 534.*

1692. *December 21.* JAMES INGLIS, Minister, *against* ABERCROMBIE's Factor and Tenants in East Barns.

THE Lords refused to repon the said factor to his defence of *bona fide* payment, not only in respect of the circumduction in the decret *in foro*, but also because his factory only empowered him to uplift and sell the victual, and to pay to the creditors as they should be ranked; and *ita est* Mr. Inglis is preferred to

Charteris, to whom the factor has paid; and it is not just to make factors arbiters and judges, to pay to what creditors they please. *Vol. I. page 534.*

---

1692. *December 21.* SCRYMZEOUR of Kirktown *against* LYON of Bridgetown.

SCRYMZEOUR of Kirktown against Lyon of Bridgetown. Some of the Lords thought it hard that he should have preferred his wife and children, by his disposition, to his other extraneous creditors; yet seeing he was then under no legal diligence, it was proposed, that the husband being yet alive, so that the wife's life-rent did not yet exist, and it was uncertain if ever, the creditors ought to be preferred to the goods, on their finding caution to restore the price to the wife, in case she happen to survive her husband: But in regard it dipped on a general point, which the Lords had declared they would hear, between Sir Thomas Moncrieff and the other creditors of Cockburn of Lanton, viz. if a notorious bankrupt, where there is no diligence against him, can gratify or prefer one creditor to another, ay till he be incapacitated; they superseded to give answer in this case, till it should be decided there. *Vol. I. page 534.*

---

1692. *December 21.* STILLY of Chang, *against* JEAN KENNEDY, LADY BORELAND, and COCHRAN, now her Husband.

THE Lords thought it a suspicious business, that they had let it lie over near forty years; and that the first bond was null, being granted by her *stante matrimonio*; and that the second bond, though *in viduitate*, was given *in recenti luctu*, shortly after her husband's death, and to shun a poiding, and so was elicited *vi et metu*: and, on the other hand, it was dangerous on such presumptions to take away clear bonds, though conceived unformally, seeing she, as intromitter with her husband's goods, might grant this second bond. Therefore they remitted to the reporter to agree the parties. *Vol. I. page 535.*

---

1692. *December 21.* MAJOR WISHART *against* JAMES ROOME.

THE Lords thought the evidences adduced by Wishart, that Roome took that disposition made by Wishart to D. Spence, Roome's factor, in satisfaction of the debt owing by Wishart to Roome, or if it was only in farther corroboration of his debt, not so clear; therefore, before answer, they fixed upon that point, that Roome having arrested D. Spence at London for this debt of Wishart's, as well as others, and having entered into a submission with him on all, there followed a decreet-arbitral and award; which submission being without Wishart's consent,