

meddle with them: but six or seven carried it, that the Parliament's remit was taxative, and only relating to the annualrents due during the forfeiture and dis-possession, and thought the Lords not excluded nor incompetent as to the annualrents due before the forfeiture; and, therefore, that the letters of horning were warrantable *quoad* these.

Then it fell to be considered, that the horning being declared null, and recalled, in so far as it gave warrant to charge for the principal sum and annualrents, during the forfeiture, that, therefore, they should fall *in totum*, and be declared null: But the Lords remembered, that a charge might be illegal *quoad* a part,—as if I charge for a sum, whereas a part is instructed paid by a discharge produced; yet it may subsist *pro reliquo*: and that many things may be good reasons of suspension, and yet not amount to a nullity; seeing, *utile per inutile non vitiatur*; and, therefore, they inclined to sustain this charge as to the annualrents preceding the forfeiture; otherwise he would but raise new letters, and charge for these; which would only multiply expenses on the parties, and put them to give in a new bill of suspension.

It was started in this case, if creditors might, for such debts as were superseded and referred to the Commission, serve inhibition, and raise adjudication or other real diligence; for, if that were stopped, as well as personal, then a creditor, who lends his money now, and has all that diligence and execution open to him, is in a better condition than those creditors whose debts are prior to the forfeiture. But this point was not decided. *Vid.* 3d January 1694. [Campbell against Neilson.] *Vol. I. Page 578.*

1693. December 15. JANET KINCAID against PROVOST COLTRAIN in WIGTON.

THE Lords thought it hard to take away the bonds, (which were now in his hands, and so became his evidents;) especially seeing she had accepted of the discharge. Yet, being an ignorant woman, and that there was some appearance that the arbiters had wronged her by mistake, in thinking some bonds she had in her own name, at the time of her marriage, would fall under the *jus mariti*; whereas they were heritable *quoad maritum*, they bearing annualrent, and their term of payment being past before the marriage; therefore they, before answer, allowed the commoners and witnesses to be examined upon what motive they decerned her to give the 1200 merks-bond; if it was in contemplation of these sums, which they supposed would have belonged to her husband, but truly did not. And though Provost Coltrain had given his oath upon it already, yet it was but an oath of calumny, and could not hinder the expiscation.

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1693. December 15. MR JOHN GALL against The LADY KINFAUNS.

MR John Gall, charging the Lady Kinfauns for his stipend, on a decret of locality; the Lady craved her liferent lands to be free, because, these forty years bygone, the ministers there had always received payment out of other parts of the barony. Yet the Lords found, he could not be restricted; seeing it was modi-

fied out of the whole ; and remembered they had decided so lately against the Lady Callander ; but reserved her regress and relief. *Vol. I. Page 579.*

1693. *December 15.* ISOBELL SCRYMZEOUR, LADY CORSECLAYS, *against* ALEXANDER OF CORSECLAYS.

THE Lords found, that the adjudication might proceed, not only for the principal sum and annualrent, but also for the annualrents of the annuals due before the denunciation to the horn, albeit they were not mentioned in the charge to enter, (whereon the adjudication proceeds,) and that they were not constituted by a sentence, as the decision in Durie, 2d July 1629, Purveyance, seems to require. But the Lords received it summarily, *et hoc ordine.*
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1693. *December 15.* HELEN LAUDER, and MR JAMES LAUDER, Provost of Haddington, her Husband, *against* ROBERT HEPBURN.

THE Lords repelled the reason, That he was not an agent, and so not convenient *de plano* without a process ; and found, seeing he got up the papers from her trustee, and a clerk's servant, on his receipt, he ought to reproduce them again in the clerk's hands ; and that there needed not an exhibition to be pursued against him for that effect.
Vol. I. Page 579.

1693. *December 15.* HARY BAIRD, Merchant in Edinburgh, *against* JANET HARDY.

THE Lords found his taking the precept upon one of her tenants was not to be presumed to be in satisfaction of the debt, but only in farther corroboration ; but found it behoved to ascribe in part of payment to him, in this case, because he was required to give it back to her upon payment, and he refused ; and allowed them to adminiculate, and astruct their instrument by the notary and witnesses inserted ; whom they appointed to be examined. Only, it was questioned if he should be accountable, and his debt compensated for the whole sum of one hundred merks contained in the precept, or only for the fifty merks for which the tenant had only accepted. And though this was not clearly decided, yet several of the Lords seemed to incline, that it could only extend to the sum contained in the acceptance ;—though the drawer will say, If you had returned the precept to me when I required it *debito tempore* from you, and when he was not broken nor removed, I might then have recovered the whole from him.

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