

the nullity against his adjudication, that it wanted a special charge to enter heir ; and so preferred Newlands *in hoc statu processus*. *Vol. II. Page 2.*

1698. *June 10.* HELEN WISHART *against* ROBERT BOWIE and JOHN PLENDERLEITH.

WHITELAW reported the complaint given in by Helen Wishart, relict of James Smeton, merchant in Edinburgh, against Robert Bowie, and Mr John Plenderleith, writer to the signet, bearing, That Bowie had taken a decret against her, *stante matrimonio*, for goods given to her *tanquam præposita negotiis* ; which, in law, only bound her husband ; yet, on this illegal decret of the Sheriff's, they had taken her with caption ;—therefore craved they might refund her damages by their wrongous imprisonment.

It was ALLEGED,---That the Sheriff's decret was a good enough warrant, both to the party and the writer, to raise horning and caption thereon ; for it is not their province to consider the justice or legality of decreets ; and, by the 10th Act of Parliament, 1606, horning is ordained summarily to pass on Sheriffs' decreets ; and testificates were produced by both parties, under the hands of writers to the signet, some affirming the horning and caption warrantable, and others declaring them illegal.

The Lords thought there was a probable ground to excuse them from fining and censure ; yet, the woman being palpably wronged, her expenses behoved to be landed somewhere ; and the Sheriff-clerk was most to blame, who gave out so unwarrantable a decret ; and therefore remitted it to the Lord Reporter to adjust and proportion her damage amongst them all. *Vol. II. Page 2.*

1698. *June 14.* The EARL of SUTHERLAND *against* The VISCOUNT of ARBUTHNOT and The LAIRD of KNOX.

HALCRAIG reported the Earl of Sutherland against the Viscount of Arbuthnot, and the Laird of Knox, his tutor-of-law. It was a pursuit for repayment of some accounts of expenses debursed on the three following articles : *1mo.* In the Earl's debating against and opposing the said Knox's being served tutor, in respect of his unfitness and insufficiency ; *2do.* For debursements given out in a council-process for getting an aliment to the younger children off the Viscount, as heir ; and the *third* was, For expenses given out in pursuing Knox, the tutor, to implement and fulfil an agreement passed betwixt him and the Earl to count yearly, &c.

ANSWERED,---None of thir articles were *in rem pupilli versum*, and so can never make him liable ; for the expense wared out in stopping Knox to be tutor was unnecessary, for you afterwards consented, on a transaction, that he should be tutor. As to the *second*, The Viscount behoved to defend against his brother and sisters' aliments ; because 5000 merks by year was craved, and the Lords only modified 2500 merks ; so he behoved to have a sentence to warrant the