

cussed bond, that ought not to be made use of to constitute the debt against him. The Lords found the reason of reduction, as libelled, not relevant; and that a party lawfully imprisoned might grant a bond gratuitously, where there was no antecedent cause.

*Page 147, No. 531.*

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1682. *December 6.* GAVIN HAMILTON *against* the HEIRS of BONNAR.

JEAN Lockhart having commenced a process for 4000 merks, as the half of the tocher provided to return to her, in case of no children, by her contract of marriage with John Bonnar;—it was alleged for the defender, That the tocher could not return, because it was never paid. Answered, The wife must have the benefit of the provision, unless it were alleged that the husband had done sufficient and timeous diligence for payment of the tocher, and could not recover the same. Which answer the Lords found relevant. But the defender condescending afterwards, upon diligence, *viz.* that he had pursued Captain Lockhart, the debtor, when insolvent, who was the pursuer's uncle, before the Chancery of England, where the process depended three years;—the Lords sustained the diligence, and assoilyied, although the process was never brought to any determination: And had it been sooner intended, might have proved more effectual; but Captain Lockhart's condition altering unexpectedly, by the eviction, from him, of a considerable land-estate, and the process having been intended, within two years after the term of payment of the last moiety, against so near a relation, the Lords sustained the diligence as competent.

*Page 84, No. 347.*

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1682. *December 13.* ALISON and AIKMAN *against* LUDOWICK CANT.

In a competition between two base infeftments of annual-rent, confirmed in Exchequer in one day, but the one expedite a month before the other at the great seal, they were not brought *in pari passu*; but that which first passed the seal was preferred, unless it were made appear that the other was as timeously offered to the keeper of the seal. *Vide* No. 587, [Alison against Cant, March, 1682.]

*Page 164, No. 593, [1st.]*

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1682. *December 20.* LORD ROSS *against* KER of MORISTOWN, &c.

MR John Wilkie, having granted an assignation, to his creditors, of some debts due to him by Sir John Wilkie of Fouldown, which was intimated to the Lady Ross, his daughter and heir; and, thereafter, Mr John having restricted the said sums to the half, in favours of the Lord Ross;—alleged for the Lord Ross, That his lady being minor and married, intimation ought to have been made to