him, as husband, seeing he now competes upon a right, as creditor. Answered, Although, in cases where wives or minors are prejudged, and are *in damno vitando*, it may seem reasonable to acquaint the husband or curator, yet the want of that intimation to husbands or curators cannot be obtruded to third parties. And in this case the husband, who could not but come to the knowledge of the said intimation, as he would have been *in mala fide* to have paid the cedent; so himself being now debtor with his Lady *jure mariti*, was *in mala fide* to take any positive right or privative, by a discharge or restriction; and is not so favourable as another person, who innocently might have taken a second assignation, after the first was intimated. The Lords inclined to sustain the answer; but the point was not put to the vote, in respect the creditors insisted in their reduction upon the Act of Parliament 1621.

Page 20, No. 104.

1683. *January.* ALSTON *against* Ross.

FOUND, that, notwithstanding of the Act of Parliament, strangers may be arrested within burghs for their debt; but that a Scotsman born could not be arrested upon a bond granted by him, after he had resided year and day in Scotland; and that he was free, notwithstanding of caution given *judicio sisti*.

Page 14, No. 78.

1683. *January.* ARCHIBALD AINSLEY *against* DALMAHOY and HANNAY.

A PRINCIPAL and cautioner having granted a bond for money borrowed from Thomas Weir, in name of, and as pertaining to one Wallace, his brother-in-law, payable to Wallace or Weir;—the Lords found, That Thomas Weir, as *correus credendi*, might have uplifted the money from the debtor, and effectually discharged him thereof; yet he could not, without a factory from Wallace, assign the bond to the cautioner, upon payment made to himself. This was found *pro* and *contra*; but, at length, the factory was produced.

Page 20, No. 105.

1683. *January.* SIR JAMES TURNER *against* MR JAMES PILLANS.

A SECOND appriser claiming to come *in pari passu* with the first effectual appriser; it was alleged for the first, That the second appriser had intromitted several years with the whole rents, and could not share with him in time coming, till he had once intromitted with as much effeiring to his sum as the second appriser had gotten. Answered for the second appriser, That apprisers are only to share equally when they concur; and the first appriser has himself to blame that he neglected formerly to put in a share; and as, if the second appriser had been completely satisfied and paid by his intromissions, the first appriser would

have had no repetition of any part, seeing these intromissions would have extinguished the second apprising; no more can he hinder the second to continue in his possession, by uplifting mails and duties *pro rata.* The Lords sustained the first appriser's allegeance; and found that he might likewise intromit with the rents for refunding the whole expenses of his apprising.

Page 66, No. 282.

1683. *January.* EDWARD WRIGHT *against* the EARL of ANNANDALE.

FOUND that a comprising, led for a principal sum, and some bygone annual-rents thereof, which had been paid, was not simply null, (though it could not expire; and the accumulation of annual-rents or necessary expenses fell;) but did subsist as a real security for the principal and current annual-rents. And Found, That though grounds of compensation, existing before leading of the apprising, and not applied, did lessen so much of the sums therein contained, yet the apprising did subsist for the remainder, both *quoad* accumulations and expiring. *Vide* No. 290, [Baillie of Torwoodhead against Florence Gairner and his Son, March 1683;] and No. 292, [John Græme against the Creditors of Innergelly, March 1683.]

Page 66, No. 283.

1683. *January.* ALEXANDER SINCLAIR *against* WILLIAM DUNDAS.

FOUND that seven years' possession did not afford the benefit of a possessory judgment to a second appriser against the first, whom he was within year and day of; but here the second appriser did not offer to renounce the benefit of coming *in pari passu.*

Page 67, No. 285.

1683. *January.* COUTS *against* STRAITON.

SOME of several persons of the name of Couts, nearest of kin in the same degree to one Clement Rouchhead, having granted an assignation of their share of a bond falling under executry to Arthur Straiton, and the rest having, after the cedent's decease, confirmed the whole;—it was alleged by them against Arthur Straiton, That he could have no right by the assignation, the cedents having died before their interest of nearest of kin was established in their persons by confirmation; so that it could not transmit, but remained *in bonis defuncti.* Answered, By the civil law, *dies legati cedit a tempore mortis testatoris,* and the testament was but *modus acquirendi.* The Lords found the pursuers, who were executors, had right to the whole; and that Arthur Straiton had no share by the assignation.

Page 123, No. 448.