ligence used against him, the son might do the like in the father's life, or immediately after his decease, the power of disponing being the effect of dominion. Replied, The Act is clearly conceived in favours of the defunct's whole creditors, as appears from the motives therein expressed, *viz.* That it takes some time before his death can come to their knowledge; and 'tis but just that, as the apparent heir is secure for year and day against all diligence at the instance of the defunct's creditors, so it should not be in his power to prejudge them during that space, by preferring some to others. The Lords found, that the son being infeft during the father's life, his case fell not under the Act of Parliament: and that the provision, though in the procuratory, was but personal; and assoilyied from the reduction: but waved to give answer to the first reason, *viz.* if any of the father's creditors could be gratified.—*November* 1685.

Page 28, No. 137.

The debate, (*supra,*) No. 137, being again resumed, it was alleged, That the Act of Parliament ought to be extended to dispositions made by the son, who had come to the estate *per præceptionem;* otherwise it might be eluded. 2. The father burdens the right to the son with all debts he should contract, even *in articulo mortis;* and the son is declared liable, as if he entered heir, and so cannot, more than an heir, dispone within the year. Answered, The Act is *stricti juris;* and there can be no pretence of collusion in this case, where the son's disposition was fourteen or fifteen years before the father's death, and his infeftment expede under the great seal. 2. The clause burdening the son, as if he was heir, is only intended to secure the creditor's debt, without any respect to the Act of Parliament. The Lords, having re-considered the debate, were divided in their opinions; but my Lord Ballenden, having consented to Arniston's preference, as to his proper debts, the first interlocutor stood as to him: but the Lords reduced *quoad* the other creditors, whom Arniston had, some time after his disposition, assumed.—*March* 1686. Which seems somewhat inconsequential. *Vide* No. 773, [Lord Ballenden against William Murray, March 1685.]

Nota. The defunct's creditors, doing diligence within the three years, are preferable, even where the heir dispones after the year; otherwise the heir's creditors would have more advantage by a voluntary disposition, than they could have by a legal diligence, which were absurd. But a disposition within the year would be postponed to the defunct's creditors, though they do no diligence within the three years; such dispositions being prohibited, in so far as they prejudge the defunct's creditors, where no diligence or time is limited or required. —*Castlehill's Pratt.* tit. *Alienation,* No. 81.

Page 31, No. 144.

1686. *March.* OLIPHANT *against* SIR JAMES COCKBURN.

A REDUCTION, upon the Act 1621, of a disposition, by Mr Laurence Oliphant, advocate, of his whole estate to his near relations, and conjunct persons, for relieving them of cautionary, being raised, as done to conjunct persons, when he was *in lecto,* where creditors could have no execution against him, and he being curator to the pursuers, having the grounds of their debt in his own hands;—Answered, There was no diligence against Mr Laurence, nor was his condition suspected by any, and the pursuer's debt was not preferable or privileged as a pu-

pil's debt; nor was it payable till after Mr Laurence's death. The Lords first assoilyied from the reduction; but, upon a new hearing, they reduced the disposition, upon the specialty of the pursuer's having been pupil to Mr Laurence, who died *ante redditas rationes.* *Page* 31, No. 145.

1686. *March.* MARY COCHRAN, MR WALTER COCHRAN, and ANDREW THOMSON.

ONE having granted an assignation, to his niece, of a bond, without delivering thereof; and she having pursued an exhibition against the cedent's heir,—it was alleged for the defender, That the bond and assignation were never delivered, but remained in the cedent's hands at his death, and bore no clause dispensing with the not-delivery. Answered, That the assignation contains a reservation of the granter's liferent, with a power to alter, which was a rational interest for retaining possession of the writs; 2. The assignation and bond were delivered, in so far as the cedent, before his death, delivered to the assignee the key of his cabinet, where the papers lay. Replied, That a dispensing clause hath the effect of delivery; but such a reservation hath not; 2. The cabinet key was delivered only *custodiæ causa*, as the keys of the cedent's house were. The Lords found, That the niece had right to the bond, and preferred her to the heir. *Page* 47, No. 208.

1686. *March.* MRS RUTHVEN *against* LORD REIDFOORD and HUGH WALLACE.

HUGH Wallace, cash-keeper, who had right to several apprisings upon the lands of Corstorphin, having, by a contract with my Lord Reidfoord, a creditor, preferred his Lordship, and communicated to him these rights; and thereafter consented to an annualrent of £100 sterling, to Mr Ruthven's Lady; in a competition with her and my Lord, it was alleged for the latter, That apprisings may be qualified and restricted by personal obligements and rights. Answered for Mrs Ruthven, That no personal obligement could qualify Mr Wallace's apprising, in prejudice of Mrs Ruthven, as a singular successor, whose right is real by infeftment. The Lords preferred Mrs Ruthven. *Vide* No. 310, [Sinclair of Southstone against Sinclair of Stanestone, January 1685.]

Page 77, No. 318.

1686. *March.* SKIRLING *against* MR CRICHTON.

A CREDITOR having granted a discharge to two of four cautioners, for love and favour; and declared therein, that the whole debt should stand, and be payable by the other two cautioners,—the Lords inclined to think, that the discharge imported a discharge of the half, seeing it was not conceived by way of *pactum de non petendo*.—The like was found as to a co-tutor.

Page 113, No. 422.