

1686. *March 26.* CUNNINGHAM of AUCHINHARVY *against* DOCTOR CUNNINGHAM'S RELICT.

THE case of Cunningham of Auchinharvy against Doctor Cunningham's relict, now spouse to Denholme of Westshiels, was reported by Marcus. The Lords found, where a woman had a peculiar and reserved liferent from her husband's *jus mariti* by her contract of marriage, she might dispone or assign it *stante matrimonio*, without her husband's consent; (for here his consent could not be got, being fled, as on the plot and forfeited.) This interlocutor was adjusted, with consent of parties, to give Auchinharvey a legal right to uplift the sums.

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1686. *March 30.* STEPHEN ARNAULT *against* ALEXANDER HAMILTON and JAMES SCoulAR.

STEVEN Arnault in Rowen against Alexander Hamilton and James Scoular, merchants in Edinburgh. After debate, the Lords, before answer, ordain the said Steven Arnault, charger, to condescend who were the creditors to whom the French debts were due, and to instruct that the 70,000 livres were paid to them; and ordain the suspenders to condescend and instruct what eases and abatements the charger got of these debts; and also ordain the charger to condescend what sums he received by virtue of the factory, and what diligence he has done for such of these debts as are resting; and in like manner ordain the charger to condescend how Mr Scoular came to be debtor to the cash in 19,000 livres, and how the stock came to be debtor to the charger for the 6000 livres worth of goods sent to Scotland, and for the £1600, and the cellar-maill; and assigned the 1st of November next to both parties; and in the mean time recommended to three of their number to settle them; for Arnault had charged on a clear bond; whereof they raised suspension, that it was obtained by extortion from them, being in a strange country, and by circumvention, Scoular's estate and effects being concealed from them; and they founded compensation on the factory he had got from them, and on the clause of relief by which he was bound to pay the French debts, and the other grounds above written. And the Lords thinking it hard to reserve their action against Arnault for these compensations, they received them *hoc loco*.

Then, on a new hearing, they ordained the suspenders, Alexander Hamilton and James Scoular, to exhibit upon oath, in the vacance, before these three Lords, all books and papers they have concerning the society and copartnery, that the charger may be thereby able to condescend in the terms of the interlocutor; and also ordain them to give their oath of calumny, if they have just reason to deny that Mr Scoular was sole cash-keeper to the society; and ordain Mr Arnault to give his oath, if he has uplifted any of the debts due in Ireland, and if he has the instructions thereof: and ordained Arnault to give in an account of what articles contained in the factory he has received, and to exhibit the instructions of such articles as he has not received, and that at Rowen, before any whom Mr Hamilton should appoint to receive them. But Mr Hamilton urged, that the charger might condescend on