

from her, *super hoc medio*,—that you, as guilty of the reset of that theft, must be liable for the whole damage. Bessie, thinking herself aggrieved by the Bailies' interlocutor, procures an advocacion; and, at discussing, insisted on thir reasons, That the Bailies had committed iniquity in not ordaining Mrs Blair, the pursuer, to prove *quomodo desiit possidere*; 2do. That she did not first discuss the principal thief; for, if the principal were assoilyied, there could be no punishment for reset; 3tio. They had been iniquitous in sustaining and inferring her knowledge from presumption, *viz.* That she dwelt in the neighbourhood, and the hand-bell intimating the thief went daily by her door, and the proclaimer ordinarily came in and drank in her house;—all which might be true, and yet the marks and qualities of the stolen goods never come to her knowledge; 4to. They committed iniquity in stretching it to the whole goods stolen; 5to. Though they sustained her defence, That the gown was pawned and impignorated in her hands for a little money, which is a fair and usual bargain, yet they would not allow her to prove this by women-witnesses, though others are seldom present at such transactions.

ANSWERED,—The Bailies committed no injustice; for they ordained the pursuer to prove that her clothes were amissing; and, as to the *second*, There was no need of convicting the principal thief, where they are not insisting *ad criminalem effectum*, to put the resetter to the knowledge of an assize, but only are craving damage and interest:—To the *third*, Her knowledge must be presumed; for Janet Robertson, whom she names as the impignorator, is a notorious strumpet and thief, enacted in the Court-books as such; and this very defender is *pessimæ famæ*, and under the name of a common resetter; and it is *ignorantia affectata* in her to pretend *nescire id quod omnes de vicinia sciunt*:—To the *fourth*, Reset would have no singularity at all if it did not operate more than the mere restitution of what is found beside them; and, therefore, to discharge that wicked trafficking, they must be liable for all, as is practised in thefts committed in the Highlands:—To the *fifth*, If women be allowed to prove these hypothecations of goods, it shall palliate that usury and infamous trade of resetting stolen goods under the pretence of pawning them for money; and they shall adduce the pawners and thieves for witnesses; and women, being inhabile in law, much more are these in such hidden bargains. Therefore the Bailies did justly in ordaining the impignoration to be proven *per testes omni exceptione majores*.

Some of the Lords thought the Bailies had stretched the case too far, and were for remitting it back, with some qualities and directions; but the plurality remitted it simply, to discourage that too frequent trade of resetting stolen goods under the borrowed name of pawns.

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1698. January 4. LADY CLACKMANNAN and HARY BRUCE *against* Her HUSBAND'S CREDITORS.

THE Lady Clackmannan, and Hary Bruce, her factor, by a bill, represented, That, on the divorce obtained by her against her husband, she has entered to her jointure of thirty chalders of victual, and the house of Sauchie, in which she

stands infeft; and the said house being ruinous, craves the factor on the estate for the creditors may be ordained to advance 500 or 600 merks for repairing the said house, seeing it will be their prejudice if it fall. ANSWERED,—The creditors have the burden of upholding the principal mansion-house of the estate at Clackmannan, and it were hard to oblige them to more; and the Lady may well enough, out of her opulent jointure, maintain her own liferent-house; especially seeing Greenock was threatening to evict these very lands of Sauchie on an ancient interdiction. REPLIED,—The Lady was content to leave it in a sufficient habitable condition if it were once repaired, which is all that law requires of a liferenter; and, when the lands come to be sold by roup, [they] will give the greater price that the manor-place be kept in good condition.

The Lords refused the bill *hoc ordine*, and would not summarily ordain the creditors, nor their factor, to uphold or repair her jointure-house; and especially when the right was quarrelled, and under reduction; and the creditors did not consent to the reparation, who are now the heritors of the lands and houses.

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1698. *January 6.* LESLY of EASTQUARTER *against* JANET and ANNA DICKS.

LESLY of Eastquarter pursues Janet and Anna Dicks, daughters to Grange, for tutor-accounts of Sir John Lesly, their grandfather. The DEFENCE was,—I can only be liable *secundum vires inventarii*, because I have entered heir *cum beneficio*, as the Act of Parliament 1695 allows. ANSWERED,—You cannot have the benefit of that Act, for it is only introduced in favours of apparent heirs after the date of the Act, or whose *annus deliberandi* was then running: but, *ita est*, Your predecessor was dead many years before the making of this Act, and your *annus deliberandi* was expired; and it is evident, by the Act, there is no new year allowed to deliberate. REPLIED,—The words, “for hereafter,” were only added to exclude such as had entered before simply, conform to the law then standing, from claiming the privilege of entering a second time, *cum beneficio*, but not to hinder apparent heirs, though their apparenancy existed before the Act, to enter and serve heirs *cum beneficio inventarii*, providing they did it within year and day of the said Act.

The Lords, having considered the Act, were generally clear that it did not extend to such apparent heirs as had their year of deliberation expired before the Act was made. Yet, in regard it was moved to endeavour the settling of the parties, the decision was forborne.

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1698. *January 8.* JOHN VEITCH *against* GALT, BALFOUR, and OTHERS, POURIE'S DEBTORS.

IN a process of forthcoming pursued by John Veitch, son to Dawick, against Galt, Balfour, and other merchants, as having some goods in their hands be-