time, is given out, the same is sustained, the principal being produced *cum processu*, and in many the like cases. *Vol. II. Page* 1.

1698. *June* 7. The MARQUIS of DOUGLAS *against* M'DOUAL of FREUGH.

LORD Northberwick also reported the Marquis of Douglas, as donatar to the Viscount of Dundee, Graham of Claverhouse's forfeiture, against M'Doual of Freugh, one of the creditors, to accept of a locality of land effeiring to his sum; conform to the 24th Act of Parliament, 1696. Against which pursuit thir three dilators were proponed: 1*mo*. The sentence of doom and forfeiture, which is his active title, is not produced; 2*do*. No process, because all parties having interest are not called, *viz*. the other creditors, who may quarrel his allocation, and say it was *res inter alios acta* as to them; and they are appointed by the foresaid Act of Parliament to be called; and this process being succedaneous, in place of roups of bankrupt estates, (seeing forfeited estates cannot be so exposed,) they must have the same formalities. 3*tio*. Neither the rental nor the holding of the lands are libelled, without which no locality can be settled.

It was REPLIED for the Marquis, to the *first*, That the doom is standing in the public records of Parliament, and is notour, and has been acknowledged by the defender himself; and the Marquis's charter and seasine on the King's gift, given out in process, is a sufficient title: To the *second*, Donatars cannot know all the creditors; and, when the fund is sufficient to pay them all, there can neither be hazard nor prejudice; likeas, he has convened the rest of the creditors to the same effect, to give them off land, in a separate process, which is also in the roll to be called: To the *third*, The Marquis has an exhibition depending for the evidents of the lands, without which he could not well know the rental or holding.

The Lords repelled the *first* dilator: and, as to the *second*, Thought all the creditors should be brought into the field; but, seeing the other process was ready, the Lords conjoined them, and so repelled the *second*, in respect of the answer: and, as to the *third*, Found the rental ought to have been libelled; but, being on a new Act of Parliament, they would not cast the process on such an error and informality, but allowed the pursuer to rectify and amend his libel, by giving out a condescendence of the rental; and allowed either party a mutual probation thereupon. *Vol. II. Page* 2.

1698. *June* 8. THOMAS VEITCH *against* MARY NEWLANDS.

I REPORTED the competition betwixt Mr Thomas Veitch, advocate, and Mary Newlands; and the Lords found Newlands had a sufficient interest to propone the nullity against Mr Thomas's adjudication, notwithstanding they did not instruct themselves to be creditors to Dickson, who was Mr Thomas's author, seeing they stood infeft in the tenement; and found the right was in trust for the apparent heir's behoof, notwithstanding the back-bond bore no obligement to retrocess, but only a discharge of personal and real execution; and sustained

the nullity against his adjudication, that it wanted a special charge to enter heir; and so preferred Newlands *in hoc statu processus.* *Vol. II. Page 2.*

1698. *June* 10. HELEN WISHART *against* ROBERT BOWIE and JOHN PLENDERLEITH.

WHITELAW reported the complaint given in by Helen Wishart, relict of James Smeton, merchant in Edinburgh, against Robert Bowie, and Mr John Plenderleith, writer to the signet, bearing, That Bowie had taken a decreet against her, *stante matrimonio,* for goods given to her *tanquam præposita negotiis;* which, in law, only bound her husband; yet, on this illegal decreet of the Sheriff's, they had taken her with caption;—therefore craved they might refund her damages by their wrongous imprisonment.

It was ALLEGED,---That the Sheriff's decreet was a good enough warrant, both to the party and the writer, to raise horning and caption thereon; for it is not their province to consider the justice or legality of decreets; and, by the 10th Act of Parliament, 1606, horning is ordained summarily to pass on Sheriffs' decreets; and testificates were produced by both parties, under the hands of writers to the signet, some affirming the horning and caption warrantable, and others declaring them illegal.

The Lords thought there was a probable ground to excuse them from fining and censure; yet, the woman being palpably wronged, her expenses behoved to be landed somewhere; and the Sheriff-clerk was most to blame, who gave out so unwarrantable a decreet; and therefore remitted it to the Lord Reporter to adjust and proportion her damage amongst them all. *Vol. II. Page 2.*

1698. *June* 14. The EARL of SUTHERLAND *against* The VISCOUNT of ARBUTHNOT and The LAIRD of KNOX.

HALCRAIG reported the Earl of Sutherland against the Viscount of Arbuthnot, and the Laird of Knox, his tutor-of-law. It was a pursuit for repayment of some accounts of expenses debursed on the three following articles: 1*mo.* In the Earl's debating against and opposing the said Knox's being served tutor, in respect of his unfitness and insufficiency; 2*do.* For debursements given out in a council-process for getting an aliment to the younger children off the Viscount, as heir; and the *third* was, For expenses given out in pursuing Knox, the tutor, to implement and fulfil an agreement passed betwixt him and the Earl to count yearly, &c.

ANSWERED,---None of thir articles were *in rem pupilli versum,* and so can never make him liable; for the expense wared out in stopping Knox to be tutor was unnecessary, for you afterwards consented, on a transaction, that he should be tutor. As to the *second,* The Viscount behoved to defend against his brother and sisters' aliments; because 5000 merks by year was craved, and the Lords only modified 2500 merks; so he behoved to have a sentence to warrant the