

No 29. find the first creditor fiar. THE LORDS found the creditor had the power of up-lifting, because if he were *vergens ad inopiam* they had interest to see it better secured for their annualrents; but withal thought they could not frustrate and evacuate the substitution, but behoved to re-employ it again in the same terms as it stands in the first bond.

*Fol. Dic. v. 1. p. 549. Fountainball, v. 2. p. 668.*

No 30. 1731. July 13. MALCOLM against NEILSON.

A SUM was lent out to three debtors, payable to a woman in liferent and her son in fee. Two of the debtors died insolvent. The liferentrix found means to get payment from the third without a process when her son was out of the country, and lent it out again in terms of the former bond to a person in reputed good circumstances, who thereafter proved insolvent. The liferentrix was not found liable to make up the sum to the fiar, having an interest to see the money well secured, and having acted for the best. See APPENDIX.

*Fol. Dic. v. 1. p. 549.*

1743. June 22. CRAWFORD against MITCHELL.

No 31.

A sum provided for the wife's liferent in a contract of marriage, is not attachable by the husband's creditors, unless they offer security to make the liferent effectual.

By contract of marriage betwixt James Hog and Elizabeth Mitchell, dated the 18th of March 1741, he became ' bound to lay out the sum of ' L. 166 : 13 : 4 Sterling, with the sum of L. 186 his wife's tocher, upon land, ' bond, or other sufficient security, and to take the rights in favour of himself ' and Elizabeth Mitchell in conjunct fee and liferent, for the said Elizabeth ' Mitchell her liferent use allenary, and of the children to be procreated of the ' marriage in fee; and, failing children, the foresaid sum of L. 166 : 13 : 4 to ' James Hog, his heirs and assignees; and the other sum of L. 186 Sterling to ' the said Elizabeth Mitchell, her heirs and assignees.' And, on the other part, ' the said Elizabeth Mitchell, in name of dote and tocher, assigned and ' made over in favour of the said James Hog and herself in conjunct fee and ' liferent, for her liferent use allenary, and to the children of the marriage in ' fee, the said sum of L. 186 Sterling, contained in a bond granted to her by ' her brother William. And lastly, execution is appointed to pass upon the ' contract for implementing the conditions in favour of the wife and children, ' at the instance of Alexander Coupar minister at Traquair, and the said Wil- ' liam Mitchell.'

The sum in this bond being arrested by a creditor of the husband's for payment of L. 35 Sterling, the defence made in the forthcoming for William Mitchell, who was both debtor and trustee, was, that the sum in this bond being