often laid on in the hands of the whole managers, yet it is an ordinary practice to arrest in the hands of the treasurer; so that, if this is not law, the lieges, who relied upon a practice which never before had been controverted, will be deceived.

The Lords found, That, in regard of the practice, and because the treasurer in some sense may be said to represent the corporation in these matters, therefore the arrestment in his hands was as good as the arrestment in the hands of the whole managers.

It was not here decided (nor was it necessary,) whether, when the arrestment was laid on in the hands of the managers, it behoved to be when they were assembled in council, or if it sufficed to lay it in every one of their hands singly; but the Lords seemed to be of opinion that the last was sufficient.

1739. *January* 15. ARCHIBALD STUART *against* ——— DENHAM.

[Elch., *Tailyie*, Nos. 9 and 13; Kilk., *ibid.* No. 1.]

This process was about incurring the irritancy of a tailyie. Denham had tailyied his estate with several irritant and resolutive clauses. Archibald Stuart, as next heir of tailyie, pursues his son, the defender, upon three different irritancies said to be incurred by him. The first was the omission of the irritant and resolutive clauses in the general retour. This point Mr Stuart gained before the Session, but lost in the House of Lords. The second was the simple contraction of debts, which was said to be doing a deed by which the estates may be evicted. This he lost before the Session. The third and last irritancy, upon which this present process was brought, was an adjudication led against the estate for the bygone annuities of the tailyier's widow. It was pled, for the pursuer, that this fell under the clause by which it was made a forfeiture of the estate to do any deed of commission or omission by which the estate might be adjudged;—that the not paying the Lady her annuities was a deed of omission, upon which the estate was actually adjudged.

It was ANSWERED, for the defender,—That the suffering an adjudication to be led for the lady's jointure did not fall under that clause, but under another, by which it was made an irritancy not to purge an adjudication led for the tailyier's debts within a certain time; that these bygone annuities were the tailyier's debt, not the heir's; and, by consequence, the mere suffering an adjudication to be led for them was no irritancy, providing it was redeemed within the time allowed by the tailyie, which yet was not expired.

By this means the whole question was brought to this single point, Whether these bygone annuities were the debt of the heir or of the tailyier?

The Lords found, first, That these annuities were the debt of the heir, and that the irritancy was incurred; but, upon a reclaiming petition, they altered their former interlocutor, and found the irritancy not incurred; and, upon advising the cause a third time, they adhered to their last interlocutor.

The decision, as I thought, proceeded chiefly upon this ground,—That the widow, doing diligence within three years of the defunct's death, would be preferred by the Act of Parliament to the creditors of the heir;—that, as in that case the annuities would be reckoned the debt of the tailyier, it would be extremely hard, if, in so favourable a case as this, they should not be reckoned so too.

1739. *January* 17. FRANCIS SINCLAIR *against* SHAW and OTHER CREDITORS of Her Husband.

[Elch., No. 11, *Arrestment;* and No. 10, *Husband and Wife;* Kilk., No. 4, *Arrestment.*]

IN this case there were three questions debated. 1*mo*, Whether, when a wife enters into a submission with respect to a claim which she has as heir to her father, and the arbiters decern in a sum payable to the wife and husband for his interest, that sum be arrestable or not by the husband's creditors?

The Lords found, That the wife in that case was fiar, and the husband had only a right to the annualrents, *jure mariti;* so that the principal sum was not arrestable by his creditors.

2*do*, When a wife makes a donation to her husband, and his creditors afterwards affect the subject gifted, with diligence,—whether, in case of a revocation by the wife, the diligence falls to the ground?

The Lords found, That the maxim, *resoluto jure dantis*, &c. obtained here; that, the husband's right being annulled by the revocation, the rights flowing from him, whether voluntarily or by legal diligence, behoved to fall in course, in the same manner as if the husband's right had been qualified by a back bond.

3*tio*, Whether the *jus mariti* was a subject arrestable; or whether, not only the bygone and current annualrents of the principal sum, mentioned in the first case, were arrestable, but likewise the future?

The Lords ordered memorials to be given in upon this third question; it was found only adjudgeable. As to this last point, and what subjects are arrestable, what adjudgeable,—see *November* 18, 1742, *Creditors of the Robertsons in Glasgow.*

1739. *January* 12. CREDITORS of SIR ROBERT BAIRD *against* RACHEL LIBERTON.

[Elch., *Escheat*, No. 2.]

THE question here was, Whether the donatar of a liferent escheat was obliged