

him, as husband, seeing he now competes upon a right, as creditor. Answered, Although, in cases where wives or minors are prejudged, and are *in damno vitando*, it may seem reasonable to acquaint the husband or curator, yet the want of that intimation to husbands or curators cannot be obtruded to third parties. And in this case the husband, who could not but come to the knowledge of the said intimation, as he would have been *in mala fide* to have paid the cedent; so himself being now debtor with his Lady *jure mariti*, was *in mala fide* to take any positive right or privative, by a discharge or restriction; and is not so favourable as another person, who innocently might have taken a second assignation, after the first was intimated. The Lords inclined to sustain the answer; but the point was not put to the vote, in respect the creditors insisted in their reduction upon the Act of Parliament 1621.

Page 20, No. 104.

1683. *January.*

ALSTON *against* ROSS.

FOUND, that, notwithstanding of the Act of Parliament, strangers may be arrested within burghs for their debt; but that a Scotsman born could not be arrested upon a bond granted by him, after he had resided year and day in Scotland; and that he was free, notwithstanding of caution given *judicio sisti*.

Page 14, No. 78.

1683. *January.* ARCHIBALD AINSLEY *against* DALMAHOY and HANNAY.

A PRINCIPAL and cautioner having granted a bond for money borrowed from Thomas Weir, in name of, and as pertaining to one Wallace, his brother-in-law, payable to Wallace or Weir;—the Lords found, That Thomas Weir, as *correuſ credendi*, might have uplifted the money from the debtor, and effectually discharged him thereof; yet he could not, without a factory from Wallace, assign the bond to the cautioner, upon payment made to himself. This was found *pro* and *contra*; but, at length, the factory was produced.

Page 20, No. 105.

1683. *January.* SIR JAMES TURNER *against* MR JAMES PILLANS.

A SECOND appriser claiming to come *in pari passu* with the first effectual appriser; it was alleged for the first, That the second appriser had intromitted several years with the whole rents, and could not share with him in time coming, till he had once intromitted with as much effering to his sum as the second appriser had gotten. Answered for the second appriser, That apprisers are only to share equally when they concur; and the first appriser has himself to blame that he neglected formerly to put in a share; and as, if the second appriser had been completely satisfied and paid by his intromissions, the first appriser would