I, with the privilege of the customs of a certain bounds, within which three or four other royal burghs are erected, they pursued reduction, improbation, and declarator against Burntisland and others of these towns; and the defenders having made a production, the pursuers craved certification *contra non producta.* The Lords refused to grant certification; but ordained the pursuers to insist in their declarator.

Page 159, No. 574.

1687. *December* 17. MOIR *against* MOIR.

A BROTHER being pursued on his bond of 1000 merks, due to his sister, his defence was, That, after the bond, he obliged himself, in her contract of marriage, for a greater sum; and *debitor non præsumitur donare.* Which defence the Lords found relevant.

Page 49, No. 216.

1688. *January.* DR GAIRN *against* TOSCHOCH of MONIVAIRD.

ARRESTMENT of goods in the debtor's own possession found to affect, and to be a *nexus realis,* as well as if it had been in the hands of a third party.

Page 18, No. 93.

1688. *January.* CLELAND and PATERSON *against* WILLIAM WILSON.

ONE having apprised lands, after expiring of the legal of a former apprising thereof for the same sums; the first apprising was alleged to have been passed from, in so far as the second was an innovation, at least that the legal of the first was current; just as if, after expiring of the legal, a creditor should receive annualrent of the sums apprised for. Answered, The second apprising was but a corroboration of the first; and, as a wadsetter might [use] requisition and apprise, and yet recur to his wadset, so here the first apprising is not prejudged by the second. The Lords found the first apprising had a current legal, and did not sustain accumulation of annualrents till after the second apprising. *Vide* No. 334, [Lord Yester against Lord Lauderdale, February, 1688.]

Page 80, No. 332.

1688. *January.* COLVILL *against* WILLIAM HALLY.

IN a reduction of an apprising, upon this reason, That, though the bond which was the ground thereof, was payable the next term after the mother's death or the daughter's marriage, the charge was given, and the apprising led, before the

death or marriage was declared;—Answered, The comprising was not led till after elapsing of the term subsequent to the mother's death, and there was no necessity for a previous declarator thereof. The Lords assoilyied from the reduction, and would not so much as find the legal current upon that defect. *Vide* No. 297, [M'Braire of Netherwood against Thomas Rome, December, 1683.]

Page 81, No. 333.

1688. *January* 26. LAIRD of DRUM and THOMAS SOMERVEL *against* CAPTAIN TENENT.

JAMES Tenent, laird of Cairns, having, in anno 1679, disponed his lands to a blank person, containing a dispensation with the not-delivery, and a power to alter, *in articulo mortis;* in the year 1683, he gave a written commission to one Johnston, the writer, or any other person, impersonally, to fill up Captain Tenent's name in the disposition, either before or after his death, and to deliver it. The Captain's name was accordingly filled up, and the disposition remained with the writer, from whom Cairns, in the year 1685, called for it on his deathbed; and, upon the reading, finding it conceived in favours of the Captain's heirs whatsoever, and so disconform to his intention of making a tailyie, was so offended, that he offered to tear it; but was prevailed with to let it continue uncancelled, to be used as a scroll for drawing a bond of tailyie to Captain Tenent, and other heirs-male: but Cairns died before that was done; after whose death, the disposition being delivered to the Captain, a creditor of the defunct's appearand heir of line, raised reduction of it, upon this ground, That as the actual destroying of the disposition would have been *judicium mutatæ voluntatis*, so the recalling of it, in order to an alteration, must annul it; [and] the new right was never perfected. Answered, It were dangerous to quarrel such a right upon the depositions of writer and witnesses; and the recalling on't from the writer, to make some alteration, was not a simple, but a qualified altering; for the instrumentary witnesses will depone, that it was to be in favours of the Captain and his heirs-male, and so no alteration *quoad* him. And, in Brown of Ingleston's case, where the first disposition only contained a dispensation with the not-delivery, and the second and third to the same person differed in some things from the first, the Lords found these posterior rights, though not dispensing with delivery, but accessory, and only alterations and qualifications of the first; and by the § *Inst. quibus modis testamenta infirmantur*, a testator, who began to alter his will, being prevented by death, the first complete testament is invalidated by the imperfect one. The Lords, before answer, ordained witnesses insert, and others present, to be examined; who having deponed that Cairns, on deathbed, resolved to make a tailyie, but gave direction to preserve the first disposition for Captain Tenent's security, in case he, Cairns, should die before the second was subscribed;—the Lords assoilyied from the reason of reduction.

Page 33, No. 152.
