

put back to the legal course, wherein he will neither lose his debt, nor be prevented by any other ; for there is no other adjudication but this.

The Lords found the reason of reduction relevant against that member of the decret decerning payment ; and, as to that point, found it null, and reduced the same ; and the adjudication thereupon, in consequence.

*Vol. II, Page 465.*

1676. *December 5.*      *LOWRIE against ANGUS.*

[*See page 208.*]

THE process betwixt the parties being discussed, and observed upon the 14th day of November last, yet being heard and reported again, the charger ALLEGED that it was the custom of all provident skippers to have a pump-stelling covered with pitched canvas, to guard against the spouting of the pump ; which was wanting in this ship, and therefore the damage sustained by the charger was through his fault : neither is there any cause condescended upon, whereby the ship or pump became leaky, which could not be foreseen at the loosing, conform to the former interlocutor ; and, therefore, the charger craved his allegiance to be admitted to his probation ; specially seeing the skipper's witnesses were to be his own seamen, and it would be of dangerous consequence if the spoiling of merchants' goods might be evacuated by such probations.

The Lords would prefer neither party to the probation ; but, before answer to the relevancy, allowed either party to adduce witnesses, what the custom of skippers to secure their pumps was, and what was the cause of this pump's becoming leaky or spouting, or if there was any storm or stress of weather in the voyage.

*Vol. II, Page 471.*

1676. *December 13.*      *JOHN INGLIS against The CREDITORS of EAST-BARNS.*

IN a competition amongst the creditors of East-barns, Mr John Inglis craves preference, because he stands infest by the common debtor, long before any other creditor.

It was ANSWERED, That his infestment is base, and the other creditors are infest upon apprisings, before any possession in his person.

It was REPLIED, That he produces discharges of four years' annualrent of his sum, before the common debtor's son's infestment, from whom the creditors have apprised.

It was REPLIED, That this discharge can import no possession by his infestment, which is conditional, That if he be not paid of the sums due to him, and relieved of his cautionary, he should enter to the possession of the lands ; but this discharge is only of his annualrents by his debtor.

It was DUPLIED, That where there is no ground of simulation, a base infestment is valid ; especially being for warrandice or relief, whereby it can attain no possession till distress. *2do.* This discharge doth expressly relate to his infestment of relief.