

by Act 1641 : neither can she have a terce, because they are not heritable in themselves. *Quid juris?* Shall she have no provision at all? Has our law no remedy? Is it here mank? May she not get an alimnt decerned to her, effeir- ing to the estate?

ANENT the ANNUALRENT of BONDS.

IV.—In a bond, the term of the payment of the annualrent is one, the term of the payment of the principal is another; all such sums before the term of payment are moveable, where either parties, whether debtor or creditor, deceases before the said term. *Quid juris?* Whether will it be understood to be moveable before the elapsing of the term of payment of the annualrent, or the term of the principal sum? *De hoc dubitant Doctores.*

ANENT CAUTIONERS.

V.—The Lords have found, where a cautioner pays the debt, the creditor is not bound to assign him, but only to discharge. Let him age upon his clause of relief, as accords. Yet it is *civilius (humanius)* to assign him. *An correus totum solvens adversus cæteros actionem habeat citra cessionem*,—see Vinnius *ad* § 1, *Institut. de Duobus Reis Stipulandi, num. 4to.*

ANENT a DEBTOR CUTTING his WOODS.

VI.—A debtor cuts his woods and planting to a considerable value; the comprisers, or other real creditors, would hinder him: *Queritur* how it can be done. An inhibition reaches not, because they are *mobilia*; yet they are *pars soli* before separation, and not like to corns, which are arrestable even upon the ground, because their use is to be reaped and separated once a-year. A summons or declarator may be raised, or a bill of inhibition given in, not to pass of course, but by special notice of the hail Lords; or a petition, representing the matter of fact to the Lords.

ANENT ADVOCATIONS by MEMBERS of SESSION.

VII.—It may be questioned if the Act of the Parliament 1555, anent advocating causes of members of the Session from inferior courts, can be extended beyond its rubric, which is only of actions of removing, since Everhardus in his *loci legales* shows us it is a good argument *a rubro ad nigrum*; and that Act speaks of no other; though I see no reason of disparity why it shall be denied in others more than in this; and custom since has explained it *quoad* all: though it may be said that custom here is not enough, being only usurped against the lieges by them who are judges in their own cause. See more of this *supra*, [No. 161.] *versus finem.* *Advocates' MS. No. 721, folio 318.*

1678. February 6. MR RODERICK MACKENZIE *against* JOHN WATSON.

THE case of Mr Roderick Mackenzie, advocate, and John Watson, was this

day, on a report, decided. It was thus :—There was a bond, blank in the creditor's name. Hector's name was filled up in it; and, at the filling up, he grants a back-bond, declaring it to be merely in trust, to the behoof of, &c. Thereafter, Hector's creditors arrest this money in the debtor's hand. He to whom the back-bond was given, compares for his interest, and, by producing the back-bond, proves the money arrested to be his. (See Dury 14th November 1628, *Cumming*. See the Compend of Durie's Decisions, *verbo* Bands. See this decision elsewhere. See 22d February 1681, Poor of the West Kirk.)

ANSWERED,—The back-bond never being intimated, it can produce and found no more but a personal action against Hector, the granter; for the fee and property of the money, stood in Hector's person; and, if such back-bonds were allowed, it would open a door to all cheats. REPLIED,—The back-bond made the money his to whom the back-bond was given. That *teneris scire conditionem ejus cum quo contrahis, L. D. de Regulis Juris*. That, where a bond is appraised or adjudged, of which there was a discharge anterior, yet the discharge meets the assignee though it be a latent deed. See of discharges of bonds or tochers, of the same date with the obligations, *supra*, No. . See also of mutual and co-respective obligations, *supra*, [No. 377, December 1672,] in the *Master of Salton's* case.

The Lords found the back-bond needed no intimation, and that it affected the money so that it could not be arrested for the person's debt whose name was filled up in the bond, if the back-bond was truly of a date prior to the arrestment.

This decision was thought very strange by some; yet the Lords had formerly decided the same case thus: yea, they had found the same before, in a stronger case, *viz.* though it was comprised by the trustee's creditors from him, yet that the back-bond met the said singular successors.

The Lords were as sensible as any, of the many and great inconveniences which followed this decision: but wished a Parliament might remeid it, by ordaining such back-bonds to be registrate; for the Lords could not help it.

Advocates' MS. No. 722, folio 319.

1676. *December.* CASE of the SHIP called the CALMER.

IN December 1676, the King wrote a letter to the Lords of Session anent the ship called the Calmer, with Sir Lionell Jenkins, one of the Judges of the Admiralty of England, complaining the Lords should have declared that ship prize, only because some few in the ship were Hollanders; which could not, in law, infect the rest. This was charged upon John Inglis, and he blamed for informing the Swedes' resident, and the College of Commerce of Stockholme. The Lords wrote up a vindication of themselves in that affair, and a defence of our custom for not-publication of the testimonies of the witnesses whereupon it was adjudged and found prize: though it was alleged this concealment was only used in courts of equity in other parts of the world, where the parties get not leave to hear the witnesses' depositions; but, in all courts of law (such as is the Session) all the world over, the depositions of the witnesses are patent, and are so with us: for there be few parties and their advocates but *viis et*