

relict,—it was alleged for the defender, 1. It being two years since her husband's decease, possession of moveables is a presumptive title. 2. She had confirmed the goods as executor-creditor, upon her contract of marriage, before the gift; which legal diligence, for an antecedent debt before the horning, must have the same effect against the donator as arresting and poinding; and, the goods being in her own possession, she could not pursue herself. The Lords found the second allegiance relevant; but found, that the rebellion cut off the right of thirds, seeing truly the defunct had no goods; and the right of the third is but a consequential interest, in case the husband have goods; although diligence for positive obligations are allowed, for commerce sake, to prejudge donators.

Page 114, No. 428.

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1683. *February.*

HUME *against* ARNOT.

ONE Arnot, an appriser of lands for a small sum, being year and day at the horn, and his liferent-escheat gifted;—it was alleged for the rebel's creditors, who had adjudged the right of that apprising posterior to the liferent-escheat, That, as to the rents of the apprised lands lying in the tenant's hands, the rebel could only have so much of the mails and duties as answered to the annual-rents of the sum comprised for, in regard the superplus rents ought to be deduced off the stock, which falls not under liferent-escheat; although, if the rebel had uplifted the whole rents from the tenants, these, as being moveable, would have fallen in the single escheat. The Lords found the allegiance relevant, and that the rebel's creditors had right to the superplus.

Page 114, No. 429.

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1683. *February.* RUSSEL and TAIT *against* GEORGE CLARK.

ONE being pursued for delivery of some merchant-goods bought by the pursuer,—Alleged for the defender, That he, the same day the goods were sold, sent and told the pursuer, that, upon perusal of his books, he had been mistaken as to the price of the goods, and could not sell them so cheap, and so there ought to be *locus penitentiæ* to him, who instantly resiled before the intervention of writ or delivery of the goods. Answered, *Emptio venditio solo consensu perficitur*, without writ; nor was agreed to, that writ should intervene in this bargain. The Lords repelled the allegiance, in respect of the answer.

Page 255, No. 903.

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1682, *December*; and 1683, *March.* ALEXANDER TROUP *against* DAVID CRAIGHEAD.

MARGARET and Helen Wishearts, as heirs-portioners served to John Craig-