

ing a debt contracted prior to the Rebellion, but is dated posterior thereto. And the assignee also has an arrestment, but does not pursue on the arrestment, but on the voluntary assignation; and obtained a decret. After this, Rome is made donatar to the escheat, and obtains a general declarator; and then alleged for preference, there was *jus quasitum regi et fisco* by the denunciation, after which the rebel could not, by any voluntary assignation, denude himself of the right of this debt, though it was not then gifted: and though he had an arrestment, yet it was not insisted on: and that it was so decided *in terminis*, 14th February 1678, *Sir William Purves* against *James Deans*. ANSWERED,—The King never excluded the diligence of creditors if there was a donatar made; as was clear from *Dury*, 24th February 1637, *Pilmuir*; and *Stair*, 19th February 1667, *Glen*; and he conjoined his arrestment here, though he had not made use of it, because his debtor had given him an assignation.

The Lords demurred much, if an assignation after rebellion ought to have the effect and privilege of a legal diligence by arrestment; and therefore ordained that point to be heard in their own presence.—But here the assignation was not merely voluntary, but to satisfy the debt for which the arrestment was laid on.

And this cause being fully debated, (anent which, see *Stair*, 19th December 1676, *Grant*;) the Lords, on the 17th December, advised it; and, following the President's opinion, they preferred Robert Cleland, the assignee, to James Rome, the donatar of escheat: but if the donatar allege, on the Act of Parliament 1621, that James Weir, the party denounced, was insolvent the time of granting the assignation, or that the debt due to the assignee before denunciation was not just and lawful, ordain the parties to be heard thereanent. And Robert Cleland qualifying, that though there were hornings against Weir, yet he had not fled, and had paid after it L.100 sterling to Mr David Scrimzeor, and so was in credit; therefore the Lords repelled the reason of reduction upon the Act of Parliament 1621.

*Vol. I. Page 486.*

1687. December 2. WILLIAM KEAPPIE against JOHN DICK.

The case of William Keappie against John Dick, metster in Leith, was reported by Drumcairn. The Lords turn the bailie of Leith's decret into a libel, because it was pronounced in vacance without a dispensation, and they had refused to admit the intrinsic qualities of his oath; and therefore reponed him to his oath.

*Vol. I. Page 487.*

1687. December 3. The HERITORS of ACHTERDIRAN against BOSWELL of BALMUTO.

BOSWELL of Balmuto's case was debated. He being patron of Achterdiran

kirk, and having taken L.1000 Scots from one Mr John Wood, for presenting him, on the death of Mr Thomas Kininmonth, the last minister, under the pretext of giving him liberty of dwelling in the manse, which was said to be the patron's own house : this was complained upon by a bill, *1mo*, as *velata et palliata Simonia* ; *2do*, That the manse was the minister's, and was no more the patron's than all the rest of the heritors' who contributed to build it.

*Vol. I. Page 487.*

1687. ARCHIBALD HYSLOP'S CHILDREN *against* ROBERT CURRY and MRS ANDERSON.

*June 21.*—THE Children of Archibald Hyslop, stationer, give in a petition to the Lords, against Robert Curry, their step-father, craving that the goods and books in their mother's shop and warehouse, (she being now dead,) may be inventaried and sequestrated, till he find caution to make them forthcoming to any that should be found to have best right. And he having alleged, that he could not be thus summarily dispossessed ; the Lords refused the bill, there being no process.

Whereupon two actions being raised before the Commissaries against him, and he having advocated, there was a new bill given in against him, bearing, that he had advocated their actions depending against him for exhibition of writs, and for count and reckoning with the inventory of their father's testament, confirmed by their mother, wherein he was cautioner for her, and was embezzling all, and had advocated of purpose to delay, without any pretence of iniquity done : and though, before a process, the Lords would not put him to find caution, yet now it was just : or else craved that they would discuss it summarily.

The Lords ordained him either to find caution, or to answer summarily ; and named Castlehill auditor. *Vide 3d December 1687. Vol. I. Page 457.*

*December 3.*—Archibald Hyslop's bairns, mentioned 21st July 1687, gave in a bill against Mistress Anderson, their aunt, bearing, that, in their mother's lifetime, Robert Curry, their step-father, delivered to her a bond of 6000 merks for their use, and in their name ; and that she, through collusion, had delivered it back to him since their mother's death, and thereby had prevaricated, and betrayed the trust reposed in her ; and so was liable to them *in damnum et interesse*, if she did not deliver them that bond, seeing *quæ dolo desiit possidere pro possessore habetur* : and though, in her oath, she adjected this quality, That she took it not from him in these terms, not to give it back to him when he sought it ;—that was contrary to the nature of the deposition and trust for their behoof.

The Lords ordained her either to produce the bond, or to be liable for the money. *Vol. I. Page 487.*