

Charteris, to whom the factor has paid; and it is not just to make factors arbiters and judges, to pay to what creditors they please. *Vol. I. page 534.*

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1692. *December 21.* SCRYMZEOUR of Kirktown *against* LYON of Bridgetown.

SCRYMZEOUR of Kirktown against Lyon of Bridgetown. Some of the Lords thought it hard that he should have preferred his wife and children, by his disposition, to his other extraneous creditors; yet seeing he was then under no legal diligence, it was proposed, that the husband being yet alive, so that the wife's life-rent did not yet exist, and it was uncertain if ever, the creditors ought to be preferred to the goods, on their finding caution to restore the price to the wife, in case she happen to survive her husband: But in regard it dipped on a general point, which the Lords had declared they would hear, between Sir Thomas Moncrieff and the other creditors of Cockburn of Lanton, viz. if a notorious bankrupt, where there is no diligence against him, can gratify or prefer one creditor to another, ay till he be incapacitated; they superseded to give answer in this case, till it should be decided there. *Vol. I. page 534.*

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1692. *December 21.* STILLY of Chang, *against* JEAN KENNEDY, LADY BORELAND, and COCHRAN, now her Husband.

THE Lords thought it a suspicious business, that they had let it lie over near forty years; and that the first bond was null, being granted by her *stante matrimonio*; and that the second bond, though *in viduitate*, was given *in recenti luctu*, shortly after her husband's death, and to shun a poiding, and so was elicited *vi et metu*: and, on the other hand, it was dangerous on such presumptions to take away clear bonds, though conceived unformally, seeing she, as intromitter with her husband's goods, might grant this second bond. Therefore they remitted to the reporter to agree the parties. *Vol. I. page 535.*

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1692. *December 21.* MAJOR WISHART *against* JAMES ROOME.

THE Lords thought the evidences adduced by Wishart, that Roome took that disposition made by Wishart to D. Spence, Roome's factor, in satisfaction of the debt owing by Wishart to Roome, or if it was only in farther corroboration of his debt, not so clear; therefore, before answer, they fixed upon that point, that Roome having arrested D. Spence at London for this debt of Wishart's, as well as others, and having entered into a submission with him on all, there followed a decreet-arbitral and award; which submission being without Wishart's consent,

was a novation of the former security ; and ordained these writs to be produced before answer. *Vol. I. page 535.*

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1692. *December 21.* HARY SINCLAIR of Carlourie *against* ALEXANDER FLETCHER of Aberlady.

HARY SINCLAIR of Carlourie, against Alexander Fletcher of Aberlady, who alleged his father was holden as confessed on a debt, as due by him to Hay, formerly of Aberlady, to whom he was truly owing nothing, and was minor ; and now his heir ought to be reponed against that decreet.

ANSWERED,—If he was alive, he would not oppose it ; but by his death he has lost the mean of his probation ; and to repone against that decreet is to discharge the debt.

The Lords found, if he had been within fourteen, he could not have been holden as confessed, not being obliged at that age to depone ; but he being then married, and near twenty years old, they could not remedy it ; and therefore sustained the decreet against this child, now his heir. *Vol. I. page 535.*

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1692. *December 21.* The late BISHOP of DUMBLANE *against* BRUCE of Bordie.

THE late Bishop of Dumblane against Bruce of Bordie. The Lords found, that though the Bishop had reserved a power by the tack to resile and give over, yet Bordie had none ; and though *a paritate rationis* he should have the same liberty, he could not do it between terms ; and, therefore, ordained him to count to the Bishop for the quotes, till the Martinmas thereafter. *Vol. I. page 535.*

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1692. *December 21.* CAMPBELL'S CREDITORS *against* ———.

IN a roup of some tenements within Burgh, at the instance of Mr. George Campbell's creditors ; the Lords thought the valuation too high, some of the houses being valued at twelve years' purchase : but they allowed the report, in respect of the creditors' consent, who it seemed, in case of not getting a buyer, intended to divide the houses among them, effering to their interests and sums. Wherein this question occurred to the Lords, how the division should be made, lots being the most equal way, and who should have the first choice ; whether they who had the greatest debt owing them, or the first diligence. And though they come all in *pari passu*, as having adjudged within year and day, yet the priority of the debts should rule the choices in this case. *Vol. I. page 535.*