

stands infeft; and the said house being ruinous, craves the factor on the estate for the creditors may be ordained to advance 500 or 600 merks for repairing the said house, seeing it will be their prejudice if it fall. ANSWERED,—The creditors have the burden of upholding the principal mansion-house of the estate at Clackmannan, and it were hard to oblige them to more; and the Lady may well enough, out of her opulent jointure, maintain her own liferent-house; especially seeing Greenock was threatening to evict these very lands of Sauchie on an ancient interdiction. REPLIED,—The Lady was content to leave it in a sufficient habitable condition if it were once repaired, which is all that law requires of a liferenter; and, when the lands come to be sold by roup, [they] will give the greater price that the manor-place be kept in good condition.

The Lords refused the bill *hoc ordine*, and would not summarily ordain the creditors, nor their factor, to uphold or repair her jointure-house; and especially when the right was quarrelled, and under reduction; and the creditors did not consent to the reparation, who are now the heritors of the lands and houses.

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1698. *January 6.* LESLY of EASTQUARTER *against* JANET and ANNA DICKS.

LESLY of Eastquarter pursues Janet and Anna Dicks, daughters to Grange, for tutor-accounts of Sir John Lesly, their grandfather. The DEFENCE was,—I can only be liable *secundum vires inventarii*, because I have entered heir *cum beneficio*, as the Act of Parliament 1695 allows. ANSWERED,—You cannot have the benefit of that Act, for it is only introduced in favours of apparent heirs after the date of the Act, or whose *annus deliberandi* was then running: but, *ita est*, Your predecessor was dead many years before the making of this Act, and your *annus deliberandi* was expired; and it is evident, by the Act, there is no new year allowed to deliberate. REPLIED,—The words, “for hereafter,” were only added to exclude such as had entered before simply, conform to the law then standing, from claiming the privilege of entering a second time, *cum beneficio*, but not to hinder apparent heirs, though their apparenancy existed before the Act, to enter and serve heirs *cum beneficio inventarii*, providing they did it within year and day of the said Act.

The Lords, having considered the Act, were generally clear that it did not extend to such apparent heirs as had their year of deliberation expired before the Act was made. Yet, in regard it was moved to endeavour the settling of the parties, the decision was forborne.

*Vol. I. Page 809.*

1698. *January 8.* JOHN VEITCH *against* GALT, BALFOUR, and OTHERS, POURIE’S DEBTORS.

IN a process of forthcoming pursued by John Veitch, son to Dawick, against Galt, Balfour, and other merchants, as having some goods in their hands be-

longing to Pourie, his debtor ;—the first defence was, Goods in copartnery are not arrestable, else this would mar all commerce and transmission. ANSWERED, —They must be affectable by some diligence, and adjudication is not proper for a moveable subject ; *ergo*, they must be subject to arrestment. The Lords repelled the defence.

2do. ALLEGED,---They had no proper nor natural possession, the same being in common amongst them all. ANSWERED,---Their possessing *pro indiviso* is sufficient to found an arrestment. The Lords also repelled the *second* defence.

Then, 3tio. ALLEGED,---No communion or society could hinder a *socius* to provoke his co-partners *ad divisionem, quia nemo cogitur manere in communione* except he please : And, *ita est, auctore prætoris*, by warrant of a magistrate we divided the goods, and Balfour got Mr Pourie your debtor's share and proportion, against whom you may insist. ANSWERED,---Though you might lawfully divide, yet, I having put you *in mala fide*, by arresting before, you should have called me before you gave up his share. REPLIED,---You have no prejudice, for it is yet extant in that depository's hands ; and you may vindicate the same, there being a *nexus realis* which follows the arrested goods. DUPLIED,---I will not enter into that debate, Whether arrestment be only a personal prohibition, or if it affects the goods wherever they go. You could not change the nature of my action by a deed of yours ; and, where there is *difficultas conveniendi*, it is more reasonable you be at that trouble of recovering the goods than I.

The Lords decerned against Galt, &c. reserving their recourse against the haver of the goods ; and, he being called *incidenter*, they were ordained instantly to debate. *Vol. I. Page 810.*

1698. *January 8.* HAIG of BIMERSYDE *against* SIR PATRICK SCOT of ANCRUM.

IN a process, betwixt Haig of Bimersyde and Sir Patrick Scot of Ancrum, about their proportion of cess and teinds, there was an unwarrantable addition made to the interlocutor of the Lord Arbruchell, Ordinary in the cause, by John Blair, one of the servants in Mr James Dalrymple's chamber ; and he being called, and acknowledging he did it by order of one John Scot, an extractor there ;—the Lords, finding it *mali exempli*, they fined Blair only in five dollars, his being but an act of ignorance, and Scot in fifteen dollars to the poor, and sent him to prison, in the meantime, as more guilty. *Vol. I. Page 810.*

1698. *January 8.* LADY STAPLETON *against* The EARL of ANNANDALE.

THE Lady Stapleton gave in an appeal and protestation, for remeid of law, to the Parliament, against a sentence pronounced in favours of the Earl of Annandale, against her and her tenants, upon a comprising, which she ALLEGED was extinct by intromission within the legal ; and her witnesses were not allowed to be interrogated as to some part of these lands, called Raccleugh, because his possession thereof was several years prior to his apprisings. *Vol. I. Page 811.*