

the depositions in Carpew's hands, to be kept by him for the use of all concerned.

No 13.

“ THE LORDS found, that the pursuer, who was fiar and maker of the tailzie, had right to call for delivery of the tailzie to him as his own proper evident, notwithstanding of the prohibitory and irritant clauses above mentioned.

*Fol. Dic. v. 1. p. 512. Dalrymple, No 123. p. 171.*

1732. *November.* CREDITORS OF AUCHTERLONY Competing.

No 14.

AUCHTERLONY, before absconding for debt, made a list of his bills, which he indorsed blank, and sent the whole in a letter to Spence his father-in-law, bearing, that he had sent the bills to him for the use of his creditors. After the bills came into Spence's hand, but before any meeting with the creditors, several of these creditors, taking the start, laid arrestments in the hands of the accepters of these bills. In a competition, the other creditors craved to be preferred, as the bills were delivered to Spence, their trustee, before the date of the arrestments. The arresters yielded, that a bill indorsed blank, delivered to a man for his own behoof, becomes his property; because, by such delivery, he is empowered to fill up the indorsation in his own name. But they contended, that Spence was trustee for Auchterlony, not for his creditors; that the bills remained still under the power of Auchterlony, since they were not delivered to his creditors, or to a trustee for his creditors; see *l. 14. § ult. D. De furtis*; and therefore, that the bills, as Auchterlony's property, were regularly affected by the arrestments.

“ The arresters were preferred.”

*Rem. Dec. v. 2. No 5. p. 11.*

1744. *January 4.*

Sir JOHN BAIRD *against* CREDITORS OF Mr HUGH MURRAY.

IN the year 1737, Sir James Rothead made a settlement of his estate, heritable and moveable, upon certain persons, as trustees for behoof of his heirs therein named. Hugh Murray, the only accepting trustee, did, in December 1737, confirm the moveables; and, not having leisure to execute the office of executor, he granted a factory to George Gordon writer in Edinburgh, to uplift the moveable debts, grant discharges, and to accompt to him for his intromissions. In September 1740, Mr Murray and George Gordon instituted an accompt upon the subject of the factory, by which George Gordon came to be debtor to his constituent in the sum of L. 286 Sterling, for which George Gordon granted bill of even date with the fitted accompt, payable to Mr Murray.

No 15.

A sum of money was put into the hands of a party, with a declaration that it was to be paid to the nearest of kin of a certain person. It was found the person who deposited it, might have re-claimed it.