blank, but do not remember if it was delivered by Samuel, or the writer, to the Bailie. And Raploch having condescended on the onerous cause of the discharge, for that it was granted by a conjunct person, and offered to prove the same, the Lords resolved to examine Samnel; and he, being abroad in Holland, ordered the bill to pass, and Raploch to be set at liberty, upon granting a disposition conform to the act of sederunt, although the act declares that persons imprisoned are not to be set at liberty upon juratory caution; but Samuel's absence was the special motive.—*March* 1683.

Thereafter the suspension being discussed, and the oaths of Bailie Hall and the writer advised, who deponed that the bond was drawn and signed for the use of Bailie Hall, to whom Samuel owed a considerable sum of money, and that the bond was delivered to Edmiston or Samuel, to be delivered to Bailie Hall;—the Lords found, That although, when parties received blank-bonds at the second hand, from another creditor that took it blank, the second creditor ought to intimate it as an assignation to secure against the deeds of the first creditor, yet that a bond delivered blank to the first creditor needs no intimation; and therefore found the letters orderly proceeded.—*February* 1684.

Nota. This seems to frustrate diligences against blank-bonds; for the receiver of the blank-bond, to save the necessity of intimation by a second creditor, may allege that it was designed, *ab initio*, for that creditor or any other he pleases; and so it passes through many hands, and is secure upon that pretence; so, at least, it should be declared before the witnesses of the bond, to whose behoof it is taken, *ab initio*, otherwise the receiver of the bond to be reputed the first creditor.—*Castlehill's Pratt.* tit. *Bonds*, No. 145.

Page 40, No. 184.

1684. *February.* POURIE *against* THE LADY ROSS and her CHILDREN.

A MINOR having granted to his tutor a general discharge, with consent of his curator, who likewise took burden for his pupil,—the Lords found, That, if the minor should quarrel the discharge, as not proceeding upon a full charge, the tutor might recur against the curator; and that the curator, as in the case of a cautioner, had not the benefit of the personal exceptions of minority, &c.

Page 57, No. 240.

1684. *February.* SIR ALEXANDER HUME *against* WILSON.

IN a removing, at the instance of an adjudger, against the debtor's heir, the defender desired a locality might be assigned to the pursuer at the sight of the Lords, conform to the Act concerning debtor and creditor; 2. He alleged the adjudication was null, for that it adjudged for principal, annual-rent, and penalty, and a fifth part more; and consequently for more than was due. Answered, 1. The clause in the Act Debtor and Creditor, concerning localities, was temporary—and relative only to these comprisings whereof the legal was prorogate,

after expiring, for three or six years at most; for, had it been designed to extend to all apprisings, it would have mentioned apprisings in general, and not *the said apprisings;* which clears it to be only a branch of the former paragraph. The benefit again of assigning localities was in favours of the debtor, that he might force the creditor to possess; whereas here the creditor is desirous to possess. Nor can the privilege take place, except where all the creditors that have done real diligence, especially such as come *in pari passu,* have localities assigned them: now, the defender could not assign any localities in his land, but what might be disturbed by other creditors who have transcendant anterior voluntary rights; 2. The adjudging for the fifth part more was no nullity; because the summons being libelled in order to a special adjudication, conform to Act of Parliament, when the creditor could not know but the debtor would have produced a progress, the conclusion could not be altered upon the not-production of the progress, although that made it have the effect of an adjudication of the whole estate; but then the fifth part more was adjected as a superfluous clause, and the adjudger claims no benefit thereby. Replied, 1. That debtors might not starve during the legal comprising, which is a severe diligence, the Parliament thought fit to astrict creditors to localities, that might pay their annual-rents in the mean time, and to give them the lands after expiring of the legal, which was but a moderate *laxamentum:* the reason doth equally hold in favours of all apprisings; and the benefit ought to be perpetual and not temporary only, seeing, again, it is provided by the clause, That possession apprehended by apprisers, is to be ratified as restricted; that demonstrates how it respects the case of a creditor willing to possess, as well as the case of one that is unwilling, and lies off; 2. The creditor having adjudged expressly for the failyies, he ought not to have adjudged for the fifth part, which is in lieu of the failyie and sheriff-fees; for they, by Act of Parliament, fall under the fifth part, and are not accumulate with the principal sum and annual-rents. The Lords found, That the clause restricting apprisers to localities was not temporary, but a perpetual law; and that, in respect the style of decreets of adjudication had not been uniform, the fifth part more should not prejudge this adjudication, but be restricted to the penalty, if that be not adjudged for expressly, and should operate nothing, if it be; and ordained an Act of Sederunt to be extended, declaring, That decreets of adjudication, where the debtor doth not produce a progress, should run for the principal, annual-rent, and penalties only, and not for a fifth part more; and that all such adjudications for an additional fifth part hereafter should be quarrellable by the debtors.

Page 72, No. 302.

1684. *Feb.* JOHN MUIR, Writer to the Signet, *against* SHAW and CHALMERS.

AN apprising being quarrelled as null, in so far as annual-rents paid were apprised for;—Alleged for the defender, That he being assignee to the bond, the ground of the apprising, and to the bygone annual-rents resting owing, and ignorant *facti alieni,* he had reason to presume all annual-rents were resting; so that his apprising for some that were paid could be no nullity, but only infer a restriction. Answered, Though such a mistake in an assignee to an apprising,