

1685. November 25. MRS FORRESTER *against* GEORGE GOVAN.

THE case of Mrs Forrester and George Govan was reported by Drumcairn. A wife's creditors who had adjudged her jointure lands, pursuing for maills and duties, it was ALLEGED, by the husband's creditors, there could be no jointure, because, by the contract of marriage, it was only provided "at and on the receipt of the tocher;" and *ita est* the tocher is not yet received.

ANSWERED,—She was not bound for it, but her father.

REPLIED,—It was made payable to her husband and her, and if he would not do diligence for recovery of it, she might; for in sundry cases the Lords authorise the wives, where their husbands refuse concurrence. DUPLIED,—That the *jus executionis et exactionis stante matrimonio* was only in the husband; and where she can act without him, is allenarly when she craves him to be inhibited as *vergens ad inopiam*, but not against third parties.

The Lords found the husband only, and not the wife, liable to do diligence for this tocher, she not being personally obliged; and therefore assoilyied from the reason of reduction.

The same was decided in *February and September 1671*, between *Corbet and Menzies*. *Vol. I. Page 377.*

1685. SIR ANDREW RAMSAY of ABBOTTSHALL *against* CHARLES WHITE.

October 15.—AT Privy Council, Sir Andrew Ramsay of Abbotshall gives in a petition, showing that one Charles White had bought £200 sterling worth of bear from him, and then fled to London, where he was pursuing him; and being now here, he craved an order to arrest him, till he should find sufficient caution to answer and pay what should be decerned against him.

The Lords seeing, by Crawford the counsellor's letters, that there was a process against him there, they granted warrant; and accordingly he was imprisoned. See more of this *infra*, 28th November current. *Vol. I. Page 370.*

November 28.—Abbotshall having imprisoned Charles White, as mentioned *supra*, 15th October last, by warrant of Privy Council, he steals out a decret of *cessio bonorum*, and thereon charged the Magistrates of Edinburgh to set him at liberty. Abbotshall, being informed, suspends on thir reasons:—*1mo*, That he was imprisoned by the Secret Council's warrant, and so he should apply to them. *2do*, The executions of his summons were false.

Then Charles gave in a bill, craving he may either be alimanted, or set at liberty; or the suspension summarily discussed. Abbotshall ANSWERED,—He was content to liberate him, if he would find (if not *cautio judicatum solvi*,) at least *judicio sisti*, to abide all the diets of process, and not to fly as he has always hitherto done, both here and at London.

The Lords refused his petition; and, on this occasion, made an Act of Sederunt, which is printed, anent processes of *cessio bonorum*. *Vol. I. Page 379.*