

mitted a Lord, might be allowed to plead for him. The President told him that could not be done, he being now entered on his trials. The Duke contended, that Sir John Gilmore had pleaded for his son-in-law, Sir John Nicolson, after he was President. But that was because he was declined from judging in it; so the cases were not alike. *Vol. I. Page 500.*

1688. *June 13.*—The case of Richard Cunningham, and the Duke of Hamilton, mentioned 14th July 1687, was decided; and the Lords sustained the adminioles and presumptions adduced by the Duke, as sufficient to instruct, that either there was no real debt, or, if there was, that it has been paid, or included in posterior bonds and transactions betwixt them.

A bill was given in against this, and the Lords refused it, unless they adduced other qualifications to fortify and astruct the bond, than what were already made use of in the decret.

Thus the Duke did not lose all his causes, as he pretended.

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1688. *June 16.*

It was debated, if bygone annualrents of a sum in a decret, bear annualrent after denunciation, as well as the principal, by the 20th Act 1621. Stair affirms it, *tit. 10, § 75*; and there is a decision for it, *31st January 1663, Carberry*; and, after apprising, annuals bears annuals. Yet some doubt of this, because *anatocismus* is prohibited by law, though annuals may be accumulated by paction into a principal by bond.

*2do, Quæritur* whether a wife be bound to stand to tacks set by her husband of her liferent-lands, not for an elusory duty, but even to the full avail, whereof there are years to run at his death and her entry; seeing a tutor's tack expires with his office, and she may desire to possess the lands herself; and, like a ward, the tack should sleep till it end. See Craig on this point.

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1688. *June 28.* MARY KIRKPATRICK and JAMES HOME *against* SIR ROBERT GRIERSON of LAGG.

THE case of Mary Kirkpatrick and Mr James Home, minister at Kirkmahoe, her husband, against Sir Robert Grierson of Lagg, was debated and advised. John Kirkpatrick being debtor to the said Mary, his sister, in a bond of 2000 merks; and having an infetment for 7000 merks in Jarden of Applegirth's estate, he dispones it to Lagg, on his back-bond, that he had received the said disposition for 2000 merks of debt, which John was owing him, and for security of what farther sums he should pay out for him. Mary inhibits John, her brother, on her bond; after which, Lagg takes a discharge from John of his back-bond, and transacts and acquires a right to sundry others of his debts; and Mary having adjudged her brother's right to the 7000 merks, and pursu-

ing for mails and duties, Lagg competed for preference on his absolute disposition,—his back-bond being discharged, or at least for all the debts he had paid of John Kirkpatrick's. ALLEGED,—He was *in mala fide*; for John was inhibited by her before the discharge of the back-bond; and, by the Act of Parliament 1621, as John, the debtor, could not prefer other creditors to her who had done diligence by inhibition, so neither could Lagg his trustee and cousin do it. *Vide l. 7 D. Quæ in fraud. creditor*; and Sir George M'Kenzie's observations on that Act; Stair, *8th January 1669, Newman*; *24th July 1669, Fleeming*; and *supra, 23d November 1687, Lord Ballenden*.

ANSWERED,—The inhibition not being intimated to Lagg, (as the Act of Sederunt, 19th Feb. 1680, requires,) he could not be *in mala fide* to take a discharge of his own back-bond, or to transact with John's creditors; and the inhibition is null, being executed at the wrong market-cross.

REPLIED,—He should have searched the Registers; and, *esto* the inhibition were wrong executed, yet it has the effect of a diligence to affect the right, on the Act of Parliament 1621, though it would not reduce posterior rights.

The Lords found the said Mary preferable upon her diligence to Lagg, except in so far as concerned his 2000 merks, and any debts he was cautioner in, or had transacted, before the inhibition. Lagg gave in a bill against this.

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1684, 1687, and 1688. The DUCHESS of LAUDERDALE *against* The EARL of LAUDERDALE.

1684. *January 15.*—THE affair of the Duchess of Lauderdale against the Earl of Lauderdale, was reported by Edmonston; and the Lords found her factory (for she was out of the kingdom *animo remanendi*,) to the deceased Edward Masters, and Hugh Ross, yet alive, was not sufficient, the witnesses not being designed in the body, conform to the — Act 1681; and would not sustain the offer made by the Duchess's procurators, to produce a valid factory, *cum processu*, within two weeks, but *ante omnia* required one. *Vol. I. Page 260.*

1687. *August 29.*—The Duchess of Lauderdale pursues the Earl of Lauderdale for a riot, for dispossessing her, and taking away the keys of Lauderdale's castle, whereof she was liferentrix by tack. ANSWERED,—By an inventory of papers produced by herself on oath, in Yester's exhibition *ad deliberandum* against her, it appears she had renounced the liferent of the house, and he had a right from the creditors. *Vol. I. Page 473.*

1688. *February 24.*—The Duchess of Lauderdale seeking an adjudication against the Earl, for the English debt whereof he is bound to relieve her, and calling it summarily amongst the acts, without giving it out to see:

The Lords (though there were prior adjudications, which case only dispensed with the course of the roll, and no more,) ordained it to be seen and returned *in communi forma*. *Vol. I. Page 499.*

1688. *June 29.*—The Duchess of Lauderdale's charge against the Earl, was reported by Tarbet; but she, not being satisfied, obtained a hearing in presence. So it was debated and decided on the 11th of July. This was a charge on the