

Charteris, to whom the factor has paid; and it is not just to make factors arbiters and judges, to pay to what creditors they please. *Vol. I. page 534.*

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1692. *December 21.* SCRYMZEOUR of Kirktown *against* LYON of Bridgetown.

SCRYMZEOUR of Kirktown against Lyon of Bridgetown. Some of the Lords thought it hard that he should have preferred his wife and children, by his disposition, to his other extraneous creditors; yet seeing he was then under no legal diligence, it was proposed, that the husband being yet alive, so that the wife's life-rent did not yet exist, and it was uncertain if ever, the creditors ought to be preferred to the goods, on their finding caution to restore the price to the wife, in case she happen to survive her husband: But in regard it dipped on a general point, which the Lords had declared they would hear, between Sir Thomas Moncrieff and the other creditors of Cockburn of Lanton, viz. if a notorious bankrupt, where there is no diligence against him, can gratify or prefer one creditor to another, ay till he be incapacitated; they superseded to give answer in this case, till it should be decided there. *Vol. I. page 534.*

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1692. *December 21.* STILLY of Chang, *against* JEAN KENNEDY, LADY BORELAND, and COCHRAN, now her Husband.

THE Lords thought it a suspicious business, that they had let it lie over near forty years; and that the first bond was null, being granted by her *stante matrimonio*; and that the second bond, though *in viduitate*, was given *in recenti luctu*, shortly after her husband's death, and to shun a poiding, and so was elicited *vi et metu*: and, on the other hand, it was dangerous on such presumptions to take away clear bonds, though conceived unformally, seeing she, as intromitter with her husband's goods, might grant this second bond. Therefore they remitted to the reporter to agree the parties. *Vol. I. page 535.*

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1692. *December 21.* MAJOR WISHART *against* JAMES ROOME.

THE Lords thought the evidences adduced by Wishart, that Roome took that disposition made by Wishart to D. Spence, Roome's factor, in satisfaction of the debt owing by Wishart to Roome, or if it was only in farther corroboration of his debt, not so clear; therefore, before answer, they fixed upon that point, that Roome having arrested D. Spence at London for this debt of Wishart's, as well as others, and having entered into a submission with him on all, there followed a decreet-arbitral and award; which submission being without Wishart's consent,