

1693. *January 18.* WILLIAM AIKMAN, advocate, *against* The CREDITORS of COKBURN.

The Lords repelled the nullity against the horning, that the ground of it was alternative, either to procure Sir Walter Seaton's discharge, or to pay the debt; and found the first clause was purified, in so far as there was a definite day inserted, betwixt and which he was to have reported Sir Walter's discharge, and which was long before any diligence done by him expired; and that in these cases *dies interpellat pro homine*. *Vol. I. page 546.*

1693. *January 18.* WILLIAM CALDERWOOD and ISOBELL MILLER in Montrose, *against* THOMAS STEEL.

The Lords had formerly found, that she, being factrix for her husband, when at sea, and granting an heritable bond to a creditor in these terms, for herself, and as factrix, that these words excluded her from her liferent of these houses *quoad* that creditor to whom she gave the heritable security foresaid; for the Lords thought that *verba non debent esse in contractu aliqua otiosa*, and that if they did not import at least a *non repugnantia* on her part, and a renunciation of her liferent never to be obtruded against him, then they signified nothing.

But this day, there being nothing yet signed nor extracted, the Lords resumed the consideration of the point; and found, by a plurality, that these words, *for herself*, were but the exuberancy and redundancy of the style, and had not been understood by the woman to divest her; and that the factory from her husband only impowered her to contract debt, but not to give away her own liferent, which she could not do without his consent; and that, she not having his authority interposed thereto, it was null. There was another point referred to the reporter, to be farther heard, *viz.* that the money then given was *utiliter in rem versum*, in reparation of this tenement, and so she must be liable *in quantum* her liferent was meliorated.

1693. *January 18.* AITCHISON of Ruchsalloch *against* The DUKE of HAMILTON.

AITCHISON of Ruchsalloch, against the Duke of Hamilton, for declaring the Barony of Monkland's exemption and immunity from the Sheriff-Court of Lanark, and their subjection to him as heritable bailie, constituted by the abbots and convent of Newbottle, with power of repledigation. Some alleged, It did not appear that either the convent had a right of regality, or that thir lands were dismembered, and erected with that power; and doubted if they could divide and give out these jurisdictions to their feuars. But the Lords, before answer, allowed a joint probation of the deeds of possession of this right of bailiary, or of the interruptions used by the Sheriffs of Clidsdale against it. *Vol. I. page 547.*