

did not bind ; though such irritancies should be purgeable at any time. *2do.* That he offered him a discharge without an assignation, which, on the clause of relief, would have reached Nimmo the debtor, notwithstanding the *supersedere* given by Blair. *3tio.* That Bell, the cautioner, could not subsume that he was prejudged by the want of the said assignation ; seeing Nimmo is as solvent now as then, being broke at both times.

Thir grounds being new, not formerly represented, the Lords altered their former interlocutor, and found the reason of suspension not relevant, founded on the instrument of offer ; and therefore decerned ; and found the letters orderly proceeded against Bell, the cautioner. *Vol. I. Page 641.*

1694. *November 7.* LADY KINFAWNS *against* The CREDITORS of CARNEGIE of KINFAWNS.

LADY Kinfauns, by a petition, represented, That she brought 30,000 merks of tocher with her, whereof 22,000 merks was in my Lord Nairn's hand, secured on infestment : That though she had conveyed it in her contract-matrimonial to her husband, yet nothing followed thereon ; and she stood last infest ; and her husband's creditors had not affected this sum ; and, being provided in a jointure of 2500 merks, she desired the Lords would allow her to charge for the annualrent of this sum, to be ascribed in payment of her liferent, *pro tanto*, during the dependence of the competition ; from the event whereof it will clearly appear there is a considerable superplus estate above the payment of her husband's debts.

The Lords found the disposition in the contract denuded her so fully, that her husband's heirs and creditors might exclude her ; so she could not legally charge for that sum. Yet, after weighing all circumstances, they gave her a year's interest of said sum by way of aliment, and to be imputed in her jointure ; she finding caution to refund it *in eventu* that the creditors be found preferable to her. Some called this equity, but not law ; yet it is frequently done to extraneous creditors. *Vol. I. Page 641.*

1694. *November 8.* DR ROBERT TROTTER *against* The LADY HARVISTON, and DUNDASS, her Son.

THE Lords found a decret quarrelled *de recenti*, upon informality or wrong extracting, might be recalled summarily on a bill ; but, after any considerable space, that they ought to proceed by way of reduction. Yet, in this case, because the charger refused to discuss summarily on the bill of suspension given in by the Doctor, who was cautioner for Watson in the suspension ; therefore, though they would not force the charger to produce his decret *hoc ordine*, yet, *ad informandum animum judicis*, they ordained Mr John Dalrymple, clerk to the process, to produce the grounds and warrants of that decret to Phesdo, before whom the bill of suspension was presented ; that if he found any irregularity in extracting that decret, he may then pass the suspension without cau-