

next lawful day, being Monday. To the 3^d, It is offered to be proven, the annualrenters came no part of that day, and so he needed not attend the whole day. To the 4th, You being lawfully cited, and contumaciously absent, the decret must bind you aye till you refund his expenses, and it can yet be put up in the minute-book. THE LORDS found the premonition and decret of declarator both null and disconform to the clause of reversion in the bond; and that where the term falls on a Sunday, the order and consignation should rather be the day before than the day after. Then it was *objected* against the annualrenters their requisition, that it was also null, being used only at the instance of the liferenter, and not of the fiar, and is not fully attested by the notary. *Answered*, The liferenter has power to uplift and re-employ for his liferent use. But the LORDS found it likewise informal, and therefore assoilzied both parties from being liable to penalties, termly failzies, or expenses to one another; but would not burden the annualrenters to uplift it from the consignator, but found the letters orderly proceeded against Ascreavy for principal and annalrent, and no more, aye and while he paid the same; for the consignation being illegal, he ought to be at the trouble of lifting it. See REDEMPTION.

Fol. Dic. v. 1. p. 549. Fountainhall, v. 2. p. 167.

1711. November 7. M'INTOSH against RATTRAY.

THE Lord Polton probationer (in the room of Lord Anstruther deceased) reported M'Intosh and Rattray. David Rattray grants to M'Intosh a bond for L. 100, payable to him and his wife in liferent, and failing of them by decease, to return to the said David himself. M'Intosh, the creditor, charges him for payment of the principal sum. Rattray suspends on this reason, that by the conception of the bond he has only right to the annualrent, and not to the principal, which is expressly provided to return to the debtor himself, it having been a donation and gratuity; and for the bygone annualrents, they are all punctually paid up. *Answered*, That the ignorance of country notaries cannot prejudice his right, Azo having long ago observed, that *eorum imperitia aliquando peribit mundus*; for it is plain, by the term of payment, viz. Whitsunday 1701, the parties designed that I might call for it after that time, else why was it put in? And the substituting of you is a mere destination, that if M'Intosh, the creditor, did not dispose on it in his own lifetime, then it should fall to Rattray, the substitute; and however it runs to me in liferent, yet I am truly fiar of the sum, and have the *jus exigendi* to uplift it; and you are only an heir of provision to succeed, if I have not otherways disposed on it. Yea of old, in Durie's time, if the first institute survived the term of payment, the LORDS found the substitution expired and evanished; and though my Lord Stair, B. 3. T. 5. § 51. says that the posterior decisions have altered this, yet still they

No 28.

No 29.

A party who had taken a bond to himself in liferent, to return to the debtor in fee, was found entitled to uplift, if the debtor was *vergens ad inopiam*; but the money to be re-employed on the same terms.

No 29. find the first creditor fiar. THE LORDS found the creditor had the power of up-lifting, because if he were *vergens ad inopiam* they had interest to see it better secured for their annualrents; but withal thought they could not frustrate and evacuate the substitution, but behoved to re-employ it again in the same terms as it stands in the first bond.

Fol. Dic. v. 1. p. 549. Fountainball, v. 2. p. 668.

No 30. 1731. July 13. MALCOLM against NEILSON.

A SUM was lent out to three debtors, payable to a woman in liferent and her son in fee. Two of the debtors died insolvent. The liferentrix found means to get payment from the third without a process when her son was out of the country, and lent it out again in terms of the former bond to a person in reputed good circumstances, who thereafter proved insolvent. The liferentrix was not found liable to make up the sum to the fiar, having an interest to see the money well secured, and having acted for the best. See APPENDIX.

Fol. Dic. v. 1. p. 549.

1743. June 22. CRAWFORD against MITCHELL.

No 31.

A sum provided for the wife's liferent in a contract of marriage, is not attachable by the husband's creditors, unless they offer security to make the liferent effectual.

By contract of marriage betwixt James Hog and Elizabeth Mitchell, dated the 18th of March 1741, he became ' bound to lay out the sum of ' L. 166 : 13 : 4 Sterling, with the sum of L. 186 his wife's tocher, upon land, ' bond, or other sufficient security, and to take the rights in favour of himself ' and Elizabeth Mitchell in conjunct fee and liferent, for the said Elizabeth ' Mitchell her liferent use allenary, and of the children to be procreated of the ' marriage in fee; and, failing children, the foresaid sum of L. 166 : 13 : 4 to ' James Hog, his heirs and assignees; and the other sum of L. 186 Sterling to ' the said Elizabeth Mitchell, her heirs and assignees.' And, on the other part, ' the said Elizabeth Mitchell, in name of dote and tocher, assigned and ' made over in favour of the said James Hog and herself in conjunct fee and ' liferent, for her liferent use allenary, and to the children of the marriage in ' fee, the said sum of L. 186 Sterling, contained in a bond granted to her by ' her brother William. And lastly, execution is appointed to pass upon the ' contract for implementing the conditions in favour of the wife and children, ' at the instance of Alexander Coupar minister at Traquair, and the said Wil- ' liam Mitchell.'

The sum in this bond being arrested by a creditor of the husband's for payment of L. 35 Sterling, the defence made in the forthcoming for William Mitchell, who was both debtor and trustee, was, that the sum in this bond being