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*ARBITRIUM BONI VIRI.*

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No. 1. 1734, Feb. 19. AGNES CORSAN, &c. *against* MAXWELL, &c.

THE Lords found they had no arbitrimt in place of the arbiters.

No. 2. 1739, Dec. 21. CAPTAIN CAMPBELL *against* CAMPBELL, &c.

FIND that a provision in a contract of marriage, in favours of bairns of a marriage, is not fulfilled by giving the whole to one. *2dly*, That the father has a natural power of division. *3dly*, That the father may lay out his money on a land estate, and give it to his eldest son, and burden it with provisions in money to the other children. *4thly*, That he had power to delegate that faculty to other friends to be executed after his death.—*Renitentibus* Arniston, Dun, Haining, and Tweddale. January 5th, The Lords adhered, and refused a bill without answers.—15th December 1738.

In this case, mentioned *supra*, 15th December 1738, The Lords found the disposition to the eldest son void *in toto*, and that we could not sustain and burden it with rational provisions, since the referees have declined to determine these provisions. It carried six to five, besides the President, who was on the side of the majority.—*Renitentibus* Royston, (who was Reporter) Drummore, Strichen, Dun, and Arniston.

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ARRESTMENT.

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No. 1. 1735, Jan. 16. THOMAS GRANT *against* JEAN WATT.

THE Lords found, though Peacock's assignation was not intimated yet the subject was arrestable, and the arrestment, if formal, would be preferred to any subsequent translation by Peacock;—but the Lords sustained the objection to the arrestment, that the citation in the process was null, and so no dependance. *3tio*, Upon the supposition that the arrestment had been valid, they repelled the objection to Grant's decret of constitution, that there was no other proof than holding Peacock as confest.

No. 2. 1735, June 10. ORR and SIBBALD *against* HARVIE.

THE Lords were much difficulted and divided, and inclined much to a hearing in presence, but the parties were poor,—and upon the vote, it carried six to five to prefer Harvie, the last arrester, in the Receiver-General's hands, when the price of the lands was then in his hands to the prior arrestment in the Court of Exchequer, and in the Receiver's hands before he had got the price:—But by six to four they preferred Orr,

the assignee, who had both intimated his assignation in the Court of Exchequer, and also to the Receiver-General and his dispute, to the said last arrestment, though at the time of intimation the money had not come to the Receiver's hands.

No. 3. 1735, June 19. ENGLISH *against* WILSON.

THE Lords preferred the arrestment on the horning to the arrestment on the Admiral precept, though prior.

No. 4. 1736, Jan. 17. BAILLIE *against* BURTON and OTHERS.

AN arrestment being used in the hands of a tenant of lands, upon the 15th of May 1725, betwixt twelve and one afternoon, the Lords found only the Whitsunday half-year's rent and preceedings carried by the arrestment; but not the subsequent Martinmas half-year's rent, because the messenger might be mistaken in a few minutes; but had the arrestment been some hours after in the afternoon, they thought the next Martinmas rent would also have been affected, as then current.—This was pronounced, though there was no competition.

No. 5. 1736, Feb. 24. CREDITORS of OGILVIE, *Competing*.

THE Lords preferred Balfour, though Finhaven's arrestment was prior, and notwithstanding of the collusion:—They were indeed of opinion unanimously, that Balfour could have no benefit by returning his process within the ordinary time, and at the same time keeping Finhaven's unreturned. But the *ratio decidendi* was, that Balfour's forthcoming and Finhaven's constitution being given out on the same day, though they had been returned and enrolled on the same day, Finhaven could not compete, because Balfour's decret of forthcoming must have been pronounced on the same day with Finhaven's decret of constitution, and till that was extracted, he could not compete, because he could have no decret of forthcoming, which is an execution, and must be on a decret. 24th February 1736, The Lords adhered.—4th February 1736.

No. 6. 1736, Dec. 7. CREDITORS of MENIE *against* BLOOMFIELD.

THE Lords adhered to the Ordinary's interlocutor, finding the quality in Bloomfield's oath extrinsic, because he did not depone upon payments made, but upon compensation; for several of us thought, that if the bond was not produced; the quality of payment in the debtor's oath would be intrinsic against the arrester, as well as against the original creditor. As to the other point, Whether compensation can yet be proved by the common debtor's oath against the arrester, as was found it might in the case of Sir William Nairn, and before that case, in the case betwixt Horne and Lord Edward Murray, the Lords unanimously found, that any liquid grounds of compensation that were liquid before that arrestment, might yet be proved by the common debtor's oath.—3d December 1736. (See Notes, *voce* OATH.)