

and pursues general declarator of both their escheats. It is alleged for Bannerman, That the horning is null *quoad eam*, in so far as she was clothed with a husband when she was denounced. To the which it was replied, That the horning stands good, in respect the same proceeds upon a fact and deed done by herself as well as her husband, whereupon decret was obtained against them both compearing. The Lords found the horning null *quoad* the woman.

Page 89.

1633. February 16. JOHN KERR against MARK KERR.

JOHN Kerr pursues his brother Mark, as heir to his brother James, for fulfilling of a bond made by the said James to the said John; Mark takes a day to produce his renunciation to be heir; and at that day offers to improve the bond produced registrate; but produces no renunciation. It is alleged by the pursuer, That he cannot improve the registrate bond *hoc ordine*, but must use an ordinary action, seeing the principal bond was not produced, but the extract out of the register. The Lords ordained the defender to pursue improbation by way of action.

Page 98.

1633. February 20. MARY STEWART, Relict of the late Earl of Athole, against The present EARL of ATHOLE.

DAME Mary Stewart, relict of unquhile James, Earl of Athole, being infest, conform to her contract of marriage, in the lands and barony of Reidcastle, which, by contract, her husband bound him and his heirs to warrant to be worth at least fifty chalders victual,—pursues the tenants and the Earl of Tullibardin, for his interest, for the maills and duties of the crop 1632. Compears the Earl of Athole for his interest, and alleges, That the pursuer cannot claim the maills and duties: because by decret-arbitral pronounced by the Earl of Kinghorn, the Viscount of Stormonth and the Laird of Inchmartine, to whom the said pursuer had submitted herself in a compromitt betwixt her and the said Earl of Athole, her sister son, who was bound to warrant the lands of Reidcastle to the Earl of Tullibardin, of her conjunct fee, what she should have for her right to the said lands of Reidcastle; the said arbiters had, by their decret, ordained her to renounce her conjunct fee and right to the earldom of Athole for 500 merks by year during her lifetime. It was alleged by the pursuer, That this decret ought to be reduced, because it was given against all equity and reason; and, in respect of her enorm lesion, ought to be reduced *ad arbitrium boni viri*, and to be rectified by the Lords of Session, who were supreme judges in such causes. It was triplied by the defender, That, in decreets-arbitral, *standum est sententiæ, sive æqua, sive iniqua sit*. The Lords first ordained the parties to dispute upon the lesion. The defenders then alleged, That the lands were burdened with infestments prior to the pursuer's infestment which would exhaust

the hail rent, except nineteen chalders of victual. The Lords thought it reasonable to rectify the decreet-arbitral, and ordained the party submitter to pay her £1000 at Whitsunday next; and yearly, since the decease of her husband, 1200 merks, at two terms, Whitsunday and Martinmas, and in time coming, during her lifetime, at the said terms.

Page 61.

1632. *March 6.* BOWMAKER *against* HOME.

IN a suspension, where a reason is not verified, nor a day granted to the suspender to prove the reason, the suspender, how soon he finds a writ whereby he may verify the said reason, may suspend again upon the same reason, and produce the verification thereof; for it is not alike in a suspension as in an ordinary action, where men will get diets of probation; but, in a suspension, it is ordained to be proven *instante*.

Page 227.

1633. *March 7.* ROBERT SMITH'S CREDITORS *against* GEORGE LESLIE.

IN concourse of creditors pursuing their common debtor, every creditor ought to be respected in order, according to their diligence, except where the common debtor is bankrupt.

Page 53.

1633. *March 19.* REID of ERDELTON *against* HAMILTON of BEILL; and
1633. *March 21.* ROBERTSON [OF LAURISTON] *against* DONYPACE.

ALBEIT an irritant clause be committed, whereby a party is obliged to relieve his cautioner of certain sums, and, for his relief, infefts him in his lands, with a condition, that in case he relieve him not, the reversion shall expire;—the Lords sometimes grant a term to the party, to purge the irritant clause; and, in case he purge it not, that the person who sought the declarator should pay the debts for the which he was infeft.

Sometimes a term is not granted, by reason of an Act of Sederunt, wherein it is declared, that the Lords will decern anent irritant clauses, according to the precise words of the condition.

Page 112.

In the declarator obtained by Robertson [or Lauriston] *against* Donypace, no term to purge was sought.

Page 112.