

ing to his goodsire. The defence against the debt is, that it was prescribed, and past forty years. He ANSWERS,—Interrupted by his father's minority. *Quær.* if this will be a behaviour as heir to his father, since, by making use of his father's minority, *reportat commodum*, and he reaches the sum contained in this bond; which otherways would be found prescribed. The eminent lawyers differed in their opinions upon this question. *Vide infra*, a similar case, stated at the end of *February* 1680, *No. 5.* *Vol. I. Page 32.*

1679. *January 11.* The EARL of HOME *against* The LAIRD of KYMMERGHAM and the LADY AYTON, his Spouse.

THE Earl of Home, as donatar, (*vide* 6th Dec. 1677,) pursues the Laird of Kymmergham and the Lady Ayton, his spouse; that he, as his Majesty's donatar, had right to Kymmergham's *jus mariti* of the barony of Ayton, in respect of his clandestine marriage, and the certification of the 9th Act Parliament 1672.

It was fully debated, but not decided. Sir G. Lockhart, and many other lawyers, thought the *jus mariti* was not *caducum*, nor at the King's disposal. For the said Act 1672 doth not bear that the marital right shall be confiscated. But, say they, the *jus mariti* is *nullius*, not being the husband's, and so *inter ἀδικοροα*, falls to the crown. *Nulla modo*; for it remains with the wife and her heirs; and, if it be the *jus relictæ*, with the husband and his heirs. And it may be exemplified in this case; where an inheritance devolves, *stante matrimonio*, to the wife, by succession or disposition, then the husband would not here get the *jus mariti* of it.

There was much debated from the canon law, anent the clandestinity of a marriage, being by one that had not the character, or in another nation, or incapacitated only *jure positivo municipali*. But, in the Roman church, matrimony is a sacrament. *Vol. I. Page 32.*

ANENT BILLS of SUSPENSION.

AN Act of Sederunt was made, That where there is a bill of suspension once presented, if the suspender compear not thereafter, yet the former charge shall not be put to execution, till an instrument be taken against the presenter of the bill of suspension, to put him *in mala fide*. *Vol. I. Page 32.*

ANENT ESCHEAT.

QUÆR. if a man's curiality falls under a single escheat. It seems not; because the courtesy seems equivalent to a liferent tack, which, by the Act 1617, is only carried by a liferent escheat. *Vol. I. Page 33.*

1679. *January 11.* SLIT *against* DOUGLAS.

THE case between Slit and Douglas being reported,—the Lords annulled