1684. *January*. ROBERT PATERSON *against* MR GEORGE JOLLY.

A DECREET of the English judges, *in foro*, being suspended upon iniquity, for their repelling this defence, That the summons which should have been executed upon twenty-one days, were executed upon fifteen days;—Alleged for the charger, That the decreet not being reviewed within year and day, it could not be quarrelled but upon such grounds as a decreet of the Lords is quarrellable; and their decreet is not quarrellable upon iniquity. Answered, Though decreets of the English judges could only be quarrelled within year and day for want of authority, they are quarrellable after year and day as other decreets, by the ordinary remedy of suspension and reduction, upon relevant grounds: And, whatever might be said as to doubtful grounds of iniquity, yet, to repel a defence warranted by an express Act of Parliament, *viz.* that summons should be executed in twenty-one days, cannot be justified: for that is *judicare de legibus*, and not *secundum leges*. The Lords differed much in opinion, if this ground of iniquity was to be sustained against the judges' decreet: but,—it having appeared from inspection of the decreet, that the defence was repelled upon this relevant reply, That the libel was proven, *scripto*, by instructions given out therewith *ab initio*,—the point debated was waved, and the decreet sustained. *Page* 266, No. 946.

1684. *January*. GOSFOORD *against* LORD BARGENY.

FOUND that one pursuing a trustee, to denude himself of the trust, was obliged to refund to the defender the expenses he was at in establishing and enabling himself to transmit the right, and also to relieve him of non-entries, ward, &c. to which he might be liable by reason of the trust, albeit the pursuer was a singular successor to the granter of the trust.

Page 268, No. 951.

1683, *March; and* 1684, *February*. RAPLOCH *against* BAILIE HALL.

RAPLOCH, being incarcerated for £1200, raised suspension upon this reason, That the bond, being signed blank for borrowed money, for the behoof of his son Samuel, and delivered to him, thereafter the suspender got Monkland to advance the money; and Samuel pretending he had not the bond in town, gave a discharge on't before the charger, Bailie Hall, had intimated his right to the blank-bond;—Answered for the charger, That his name being filled up, *non constat* if it was delivered to him in blank, it being usual for debtors to take bonds in their creditors' name, and Samuel was debtor to the charger in £800; 2. Samuel could never have been designed to be creditor; for he and the writer are the only two witnesses. The Lords ordained Bailie Hall and James Edmiston the writer, to be examined if the bond was blank *ab initio*, and if it was not delivered to the Bailie by Samuel. And they deponed, that it was signed

blank, but do not remember if it was delivered by Samuel, or the writer, to the Bailie. And Raploch having condescended on the onerous cause of the discharge, for that it was granted by a conjunct person, and offered to prove the same, the Lords resolved to examine Samnel; and he, being abroad in Holland, ordered the bill to pass, and Raploch to be set at liberty, upon granting a disposition conform to the act of sederunt, although the act declares that persons imprisoned are not to be set at liberty upon juratory caution; but Samuel's absence was the special motive.—*March* 1683.

Thereafter the suspension being discussed, and the oaths of Bailie Hall and the writer advised, who deponed that the bond was drawn and signed for the use of Bailie Hall, to whom Samuel owed a considerable sum of money, and that the bond was delivered to Edmiston or Samuel, to be delivered to Bailie Hall;—the Lords found, That although, when parties received blank-bonds at the second hand, from another creditor that took it blank, the second creditor ought to intimate it as an assignation to secure against the deeds of the first creditor, yet that a bond delivered blank to the first creditor needs no intimation; and therefore found the letters orderly proceeded.—*February* 1684.

Nota. This seems to frustrate diligences against blank-bonds; for the receiver of the blank-bond, to save the necessity of intimation by a second creditor, may allege that it was designed, *ab initio*, for that creditor or any other he pleases; and so it passes through many hands, and is secure upon that pretence; so, at least, it should be declared before the witnesses of the bond, to whose behoof it is taken, *ab initio*, otherwise the receiver of the bond to be reputed the first creditor.—*Castlehill's Pratt.* tit. *Bonds*, No. 145.

Page 40, No. 184.

1684. *February.* POURIE *against* THE LADY ROSS and her CHILDREN.

A MINOR having granted to his tutor a general discharge, with consent of his curator, who likewise took burden for his pupil,—the Lords found, That, if the minor should quarrel the discharge, as not proceeding upon a full charge, the tutor might recur against the curator; and that the curator, as in the case of a cautioner, had not the benefit of the personal exceptions of minority, &c.

Page 57, No. 240.

1684. *February.* SIR ALEXANDER HUME *against* WILSON.

IN a removing, at the instance of an adjudger, against the debtor's heir, the defender desired a locality might be assigned to the pursuer at the sight of the Lords, conform to the Act concerning debtor and creditor; 2. He alleged the adjudication was null, for that it adjudged for principal, annual-rent, and penalty, and a fifth part more; and consequently for more than was due. Answered, 1. The clause in the Act Debtor and Creditor, concerning localities, was temporary—and relative only to these comprisings whereof the legal was prorogate,