personal obligement to pay a sum, and her disposition or renunciation of rights in her person, lies in this, that the former is, *ipso jure*, null without revocation, and cannot be confirmed by an oath, which is not *modus inducendi, sed adjuvandi obligationem ;* whereas a wife's deed, in relation to an estate in her person, subsists in law, and is confirmed *morte*, if not revoked ; and so is confirmable, and rendered irrevocable by an oath. And as *sacramenta puberum* hinder restitution upon minority, so a wife's oath ought to exclude her revocation: for, in the opinion of all lawyers, privileges introduced *primario in bonum privatum*, may be passed from by judicial renunciations, which many think sufficient without oath: but the adjecting of an oath makes them altogether irrevocable. 2. The parallel doth not hold between husbands and curators; for though a wife, in duty and decency, should do nothing without her husband's consent, that is not necessary to her deeds, except in so far as he may be concerned or prejudged ;—for processes at wives' instance against their husbands have been sustained ; witness the Lady Wamphrey's reduction of her contract of marriage upon minority ;—and inhibitions at a wife's instance, against her husband notourly *vergens ad inopiam*, for implement of her contract of marriage, where no person was named therein, at whose instance execution should pass. 3. Though the *species facti*, in the Act of Parliament, be a disposition to a third party, the *ratio decidendi* was, that the wife could not contradict her oath, which, *in materia licita*, is *vinculum spirituale ;* and, to restore her against, were *præbere occasionem perjurii*. 4. The provision in the contract imports only a personal obligement ; and, not being conceived *irritanter*, it cannot have the effect of interdiction, even against the husband, far less against the son's wife, who is a singular successor. Again, the wife's renunciation was rational ; in so far as, there being nothing to maintain five children during her life, she would have been obliged for an aliment to the heir, and also to have entertained the rest in her own family, *jure naturali ;* and the public burdens being very great, the restriction to £300, free of all burden, was equal and rational. And the same being confirmed by an oath, she cannot be restored against it by any Christian judicatory, especially that provisions of conquest are not so strict obligements but that the husband has a liberty, notwithstanding, to do all rational deeds. And it was found, That a father might provide his unprovided children, of the first marriage, out of the conquest provided by the contract to the children of the second marriage. The Lords having considered the case, and the circumstances of it, they repelled the reasons of reduction, in respect of the answers ; and assoilyied from the reduction.

Page 249, No. 881.

1685. *December.* JOHN BLAIR *against* BAILIE GRÆME.

JOHN Blair having raised a summons of *rei vindicatio* of a Polish bridle, worth £50 sterling, against Bailie Græme ;—it was alleged for the defender, That *rei vindicatio* is only competent *contra possessorem*, which the defender is not. 2. The said bridle was lawfully poinded and apprised to the defender from Thomas Douglass, his debtor, in satisfaction of a part of the debt, and was thereafter, *bona fide*, disposed on as lawfully poinded, the defender having reason to think it belonged to Thomas Douglass, since possession of moveables pre-

sumes property. And the defender having discharged his debtor of the like sum for which the bridle was appreciate, he but *suum recepit*, which ought to defend against *rei vindicatio* as well as *condictio indebiti*. Answered for the pursuer, Though *directa rei vindicatio* be properly competent *contra possessorem*, yet the *actio utilis* is competent against any person who received benefit by the thing *in quantum lucratus*, and the defender must be liable for the price, as *surrogatum;* otherwise persons might come to be disappointed of their property by the extinction or loss of the subject: and the defender's oath of calumny is craved, if he had no reason to think that the bridle belonged not to Thomas Douglass. The Lords inclined to repel the defence; but, before answer, ordained some points of fact to be inquired into.

Page 258, No. 917.

1686. *January.* SIR JAMES STAMFIELD *against* MR ROBERT BLACKWOOD.

JOHN Macfarlane having granted bond to Mr David Watson, who assigned it to Mr John Mackenzie, who transferred it to Mr Robert Blackwood; and thereafter Sir James Stamfield having, after the assignation to Mr Mackenzie, and before his translation to Blackwood, arrested the money in the debtor's hands, as truly belonging to Sir Donald Macdonald, and only in trust in Mr Watson's person;—in the competition betwixt the arrester and Mr Blackwood, it was alleged for the former, That he offered to prove, by the oaths of Mr Macfarlane and Mr Mackenzie, That the bond was granted for the behoof of Sir Donald. Answered for Mr Robert Blackwood, That the cedent could not depone, nor the debtor be examined upon the trust against him, an assignee for an onerous cause. The Lords ordained both Mr Macfarlane and Mr Mackenzie, and also Mr Robert Blackwood, to be examined about the trust.

Page 22, No. 116.

1686. *January.* JOHN ADAM *against* JAMES KER and ROBERTSON.

FOUND that a donator of *ultimus hæres*, being in the case of an heir, could not quarrel an assignation granted by the defunct, for want of intimation in his lifetime.

Page 35, No. 159.

1686. *January.* JOHN MARSHALL, and CHILDREN of ——— *against* MR JOHN RICHARDSON and the HEIR.

A HUSBAND, in his contract of marriage, being obliged to secure the conquest during the marriage, to himself and his wife in conjunct fee and liferent, and to the bairns of the marriage equally in fee, took infeftment in the conquest to himself, and the heirs of the marriage, and granted bonds of provision to the younger