

pursuit is for the King's behoof, whom the negligence of his officers cannot pre-judge. Replied, The King is denuded in favours of donatars. The Lords sustained the defence on the Act of Parliament; but allowed the pursuers to help the execution, or produce a new one. *Vide* No. 927, [Crichy Gray against Pollock Maxwell, July, 1687.]

*Page* 260, No. 924.

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1687. *February*. SIR WILLIAM BINNING *against* The LADY CARSE HOPE.

THE Lords sustained a notorial copy of Colonel Gordon's testament, as the title of process, the pursuer proving, *cum processu*, that notorial copies made faith where notaries were not present at the subscribing, as notorial extracts did where the notary was present and did subscribe the instrument with the party.

*Page* 261, No. 926.

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1687. *February*. HALIDAY and HOWISON *against* WINDERAM and JOHNSTON.

A TUTOR having wadset a piece of land, for security of a creditor of the pupil's, and another creditor having arrested the rents of the said land;—it was alleged for the arrester, That his arrestment ought to take effect, notwithstanding of the wadset; because a tutor could not wadset more than he could sell the lands, without the authority of a judge. Answered, Tutors may wadset; 2. The pupil does not quarrel the wadset; and it is *jus tertii* to the arrester to quarrel the same; and, 3. The wadset is equivalent to an assignation to mails and duties. The Lords preferred the wadsetter.

*Page* 280, No. 991.

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1687. *February* 2. MASTER of MONTROSE *against* LADY GRIZEL.

MY Lord Montrose having given a bond to his sister, with this provision, That she should marry with consent of his Lordship and his friends; and my Lord having died, leaving a child who was not capable to give consent,—the Lords found the creditor's marrying the Lord Cochran's brother, without her friends' consent, was no irritancy.

*Page* 48, No. 211.

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1687. *February* 2. DANIEL NICOLSON *against* PROVOST KINLOCH.

INFECTMENT of relief to a cautioner accresceth to the creditor of the debt for which it was granted, so as the cautioner infest cannot, in prejudice of him

and the co-cautioners, apply the infestment for security of other debts due to himself.—*2d February 1687, Daniel Nicolson against Provost Kinloch :—Also, eodem die, Marshall against M'Kell, and Creditors of Clackmannan against Newton ; Bruce's Creditors, and Langton's case.*

*Page 59, No. 245.*

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1687. *February 2.* HENRY MEIN *against* JOHN RUTHERFOORD.

CAUTION as law will, found to import caution *judicio sisti et judicatum solvi.*

*Page 59, No. 246.*

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1687. *June.* MAXWELL of BEARCROFT *against* JOHN LAWSON.

FOUND that an apprising for debt contained in a bond may be redeemed, as satisfied by intromission, or other debt, as well before the apprising as during the legal ; but it was not pleaded that the apprising was null, as when a part of sums appraised for are satisfied to the appriser before leading ; seeing the same was not applied actually in a compensation.

*Page 80, No. 326.*

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1687. *June.* WISHAW *against* ANDREW LUNDY.

IN a competition between the creditors of Sir John Brown, and Andrew Lundy, cautioner for him to John Oliphant, who, upon distress, paid the debt, and took a discharge to the debtor, his heirs and co-cautioners,—and to whom Oliphant assigned an apprising of the debtor's lands, led in his, Oliphant's name, after granting of the discharge ;—it was alleged by the other creditors, That Andrew Lundy is presumed to have made payment of the debt discharged with the debtor's own means, he having been tutor to Sir John Brown's daughter, and intromitter with her estate ; and therefore the apprising, following upon a paid debt, is null. Answered, The discharge narrates Lundy to be a distressed cautioner, and bears to be granted for his relief, as to which it was equivalent to an assignation ; so as Oliphant might, even after the discharge, lead the apprising for Lundy's behoof. The Lords found the answer relevant, and sustained the apprising, even for accumulations. *Vide* No. 298, [Wishaw against Andrew Lundy, January 1684 ;] and No. 308, [Wishaw against the Children of Andrew Lundy, March 1684.]

*Page 80, No. 327.*

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