

ditors to their husbands on their contracts of marriage, to the exclusion of other creditors.

The Lords are now beginning to doubt of the legality of this, our law giving no *hypotheca pro dote vel donatione propter nuptias*; and therefore have appointed it to be heard in their own presence, in the case between the *Earl of Forfar* and one *Menzies*, the relict of one of his tenants, that they may examine it fully. *Vide 17th February 1688, Keith. Vol. I. Page 465.*

1684, 1685, and 1687. HEPBURN of HUMBY'S CREDITORS competing.

1684. *December 10.*—SOMERVELL of Drum against Adam Hepburn of Humby, is reported by Marcus. Humby being debtor to Drum's grandchild, by George Graham's daughter, they arrest the price of Crichton sold by Humby, in Sir William Primrose's hand. He ALLEGES,—That he had raised a multiplepointing, wherein he had called all Humby's creditors to debate their rights; and the infestments, and other diligences, are all ranked, and the price of the lands is exhausted, and destinated already for payment of other creditors. ANSWERED,—That was only done by collusion; and he could not gratify and prefer one to another, who was preferable in diligence.

The Lords ordained Sir William to depone *quomodo* the price was exhausted and applied, and what was yet in his hands unpaid. *Vide 9th December 1685. Vol. I. Page 319.*

1685. *December 9.*—Between David Hepburn of Randerston, and the creditors of his brother Humby. When Humby sold the barony of Creighton to Sir William Primrose, there was a destination of the application of the price (anent which, *vide 10th December 1684,*) drawn up by umquhile Sir John Cunningham, and Sir Robert Hepburn of Keith, appointing the price to be paid to particular creditors therein mentioned, whereof some were but personal creditors: and Randerston, on the faith of the destination, having paid them, and others having arrested the price, and the competition arising betwixt them; the Lords found, as Humby could not sell the lands without consent of his interdictors, so neither could he prefer one to another; and therefore found the arresters preferable to these personal creditors named in the destination. And though it was offered to be proven by famous witnesses, that the disposition was only depositated in Sir John Cunningham's hands in those terms, till the creditors in the destination were paid, yet, he being dead, they found it only probable *scripto vel juramento*. *Vol. I. Page 383.*

1687. *July 8.* In the competition betwixt the deceased Adam Hepburne of Humby's Creditors anent the price of the barony of Creighton, sold by him to Sir William Primrose, as mentioned 9th December 1685, Patrick Murray of Livingston, his son-in-law, is preferred on his Lady's right on that estate for 35,000 merks; and, on Carse's report, the Lords find her restricting her infestment, which affected both the lands of Creighton and Humby, to the lands of Humby only, as also her restricting the sum to 30,000 merks, by accepting a

bond of provision for that lesser sum, is a lesion; and therefore sustained her revocation and reduction, and reduced; and declare her infestment is a real right burdening the lands of Creighton, and therefore preferred her to Somervil the arrester, on the sums resting by Sir William Primrose, for the price of the lands of Creighton. And find that Penman's right to the acres possessed by him is an incumbrance on the lands, and ought to be purged; and that Sir William the defender ought to have the writs of the lands delivered to him; but that he ought to pursue for the possession of these acres, and the recovery of the writs, both against the representatives of Humby and of Sir John Cunningham, betwixt and the 1st of November next. And in the mean time allow him retention of the price of the lands.

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1687. July 8. JOHN CHARTERIS *against* JOHN SMITH, &c., Winram's Creditors.

THE case between John Charteris, merchant in Edinburgh, and Mr John Smith and the other Creditors of Mr James Winram, advocate, being reported by Redford; the Lords preferred the disposition to the apprising, and repelled that nullity of the infestment, that it proceeded on hesp and staple, (not holding *more burgali*;) their infestment proceeding in the same way, and so labouring under the same vice. And, as for the gift of escheat, it was alleged, the horning was null, there being a signeted suspension before the denunciation.

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1687. July 9. THE KING'S SOLICITORS *against* BRODY of LETHEM.

THE King's Solicitors having raised a summons of adjudication against Brody of Lethem for 60,000 merks of fine, for his Lady's conventicles, &c.; and it being given out to Mr James Falconer to see for him, on the 7th day after, his two men are imprisoned for refusing to give it back; and it being returned, and immediately called, it was ALLEGED,—It had not the privilege of the King's causes, of summary discussing, but was gifted in my Lord Preston's name, for the use of the two Popish Colleges of Doway and Paris. This was repelled, because the gift was not passed the seals. Then he offered land to the value; which was also refused, because it was imprisoned with liferents.

This adjudication, being for a fine, has but a reversion of one year, by the 26th Act of Parliament 1685. This was *causa religionis* that dispensed with all this precipitation.

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