

meddle with them: but six or seven carried it, that the Parliament's remit was taxative, and only relating to the annualrents due during the forfeiture and dis-possession, and thought the Lords not excluded nor incompetent as to the annualrents due before the forfeiture; and, therefore, that the letters of horning were warrantable *quoad* these.

Then it fell to be considered, that the horning being declared null, and recalled, in so far as it gave warrant to charge for the principal sum and annualrents, during the forfeiture, that, therefore, they should fall *in totum*, and be declared null: But the Lords remembered, that a charge might be illegal *quoad* a part,—as if I charge for a sum, whereas a part is instructed paid by a discharge produced; yet it may subsist *pro reliquo*: and that many things may be good reasons of suspension, and yet not amount to a nullity; seeing, *utile per inutile non vitiatur*; and, therefore, they inclined to sustain this charge as to the annualrents preceding the forfeiture; otherwise he would but raise new letters, and charge for these; which would only multiply expenses on the parties, and put them to give in a new bill of suspension.

It was started in this case, if creditors might, for such debts as were superseded and referred to the Commission, serve inhibition, and raise adjudication or other real diligence; for, if that were stopped, as well as personal, then a creditor, who lends his money now, and has all that diligence and execution open to him, is in a better condition than those creditors whose debts are prior to the forfeiture. But this point was not decided. *Vid.* 3d January 1694. [Campbell against Neilson.] *Vol. I. Page 578.*

1693. December 15. JANET KINCAID *against* PROVOST COLTRAIN in WIGTON.

THE Lords thought it hard to take away the bonds, (which were now in his hands, and so became his evidents;) especially seeing she had accepted of the discharge. Yet, being an ignorant woman, and that there was some appearance that the arbiters had wronged her by mistake, in thinking some bonds she had in her own name, at the time of her marriage, would fall under the *jus mariti*; whereas they were heritable *quoad maritum*, they bearing annualrent, and their term of payment being past before the marriage; therefore they, before answer, allowed the commoners and witnesses to be examined upon what motive they decerned her to give the 1200 merks-bond; if it was in contemplation of these sums, which they supposed would have belonged to her husband, but truly did not. And though Provost Coltrain had given his oath upon it already, yet it was but an oath of calumny, and could not hinder the expiscation.

*Vol. I. Page 579.*

1693. December 15. MR JOHN GALL *against* The LADY KINFAUNS.

MR John Gall, charging the Lady Kinfauns for his stipend, on a decret of locality; the Lady craved her liferent lands to be free, because, these forty years bygone, the ministers there had always received payment out of other parts of the barony. Yet the Lords found, he could not be restricted; seeing it was modi-