ing to his goodsire. The defence against the debt is, that it was prescribed, and past forty years. He ANSWERS,—Interrupted by his father's minority. *Quær.* if this will be a behaviour as heir to his father, since, by making use of his father's minority, *reportat commodum*, and he reaches the sum contained in this bond; which otherways would be found prescribed. The eminent lawyers differed in their opinions upon this question. *Vide infra*, a similar case, stated at the end of *February* 1680, *No.* 5. *Vol. I. Page* 32.

1679. *January* 11. The EARL of HOME *against* The LAIRD of KYMMERGHAM and the LADY AYTON, his Spouse.

THE Earl of Home, as donatar, (*vide* 6th Dec. 1677,) pursues the Laird of Kymmergham and the Lady Ayton, his spouse; that he, as his Majesty's donatar, had right to Kymmergham's *jus mariti* of the barony of Ayton, in respect of his clandestine marriage, and the certification of the 9th Act Parliament 1672.

It was fully debated, but not decided. Sir G. Lockhart, and many other lawyers, thought the *jus mariti* was not *caducum*, nor at the King's disposal. For the said Act 1672 doth not bear that the marital right shall be confiscated. But, say they, the *jus mariti* is *nullius*, not being the husband's, and so *inter ἀδεσποτα*, falls to the crown. *Nullo modo;* for it remains with the wife and her heirs; and, if it be the *jus relictæ*, with the husband and his heirs. And it may be exemplified in this case; where an inheritance devolves, *stante matrimonio*, to the wife, by succession or disposition, then the husband would not here get the *jus mariti* of it.

There was much debated from the canon law, anent the clandestinity of a marriage, being by one that had not the character, or in another nation, or incapacitated only *jure positivo municipali*. But, in the Roman church, matrimony is a sacrament. *Vol. I. Page* 32.

ANENT BILLS of SUSPENSION.

AN Act of Sederunt was made, That where there is a bill of suspension once presented, if the suspender compear not thereafter, yet the former charge shall not be put to execution, till an instrument be taken against the presenter of the bill of suspension, to put him *in mala fide*. *Vol. I. Page* 32.

ANENT ESCHEAT.

QUÆR. if a man's curiality falls under a single escheat. It seems not; because the courtesy seems equivalent to a liferent tack, which, by the Act 1617, is only carried by a liferent escheat. *Vol. I. Page* 33.

1679. *January* 11. SLIT *against* DOUGLAS.

THE case between Slit and Douglas being reported,—the Lords annulled

and reduced a bond, because it was proven to have been given to shun a poinding *via facti* upon a decreet, which decreet stood actually suspended, and the suspension intimated and undiscussed; and therefore they reponed against the bond. *Vol. I. Page 33.*

Anent Poinding of the Ground.

It was queried, if a party has a good interest to say,—"If you take out a decreet of poinding of the ground against such lands, my lands, which lie runridge therewith, must be expressly reserved forth of the said decreet, since the pasturage for beasts on these places is promiscuous, and they may easily pass from one rig to another." But now the Lords following equity, not only in ordinary poindings but also in poindings of the ground, if the party be ready to depone that the goods are his, they find that ought to stop poinding, even as it did formerly in the poinding of moveables. See *February* 1676, *Lawson*, [No. 465, § 3, page 61.] *Vol. I. Page 35.*

Anent Liferent.

A man infefts his wife in liferent of some lands, which paid victual; thereafter he sets a tack of these lands, and makes commutation from one species of victual to another, or from victual to money, in diminution of the former rental. Whether will the relict be obliged to stand to this new tack or not? It is thought she ought not to be prejudged thereby. *Vol. I. Page 35.*

1678 *and* 1679. Cleland of Hearshaw *against* Lockhart of Birkhill.

1678. *January* 1.—Cleilland of Hearshaw, as assignee by Hamilton of Green, charges Lockhart of Birkhill, &c. to pay the sum of £440 Scots, for not presenting of Claud Hamilton of Letham, conform to their bond of cautionry.

They suspend on this reason, That, at the day mentioned in the bond, the debtor, who was to have been presented, was sick; and that, *primo quoque tempore*, so soon as he recovered, about two months thereafter, they offered him; which ought to exoner them.

Answered,—By their bond, they were obliged to have sisted him in the prison of Hamilton; which they did not: and these obligations are *stricti juris*, and to be performed in *forma specifica*.

This being reported by Harcourse, the Lords, before answer, ordained the witnesses in the instrument of the offer of him after his recovery, to be examined. *Vide supra, 2d July* 1670, *num.* 58.

The suspenders aimed likewise at this reason, That their obligation to sist the principal debtor at such a precise day, was conditional: as if they had promised under the condition, *si navis ex Asia venerit*; and he being impeded *vi majore et casu fortuito*, by sickness, they were not liable, thereafter, to present him when he reconvalesced, but were *simpliciter* free. This was not debated. *Vide legem* 26 *C. de Fidejussoribus.*