

for payment of annualrents, when there was none stipulated, and neither *lex* nor *pactum* for annualrents.

Of this decision, as of many others, all the reason that can be given is, *quod sic visum est superis*. *Vide infra*, 15th Nov. 1682. *Vol. I. Page 19.*

1682. November 15.—Between Alexander Home of Linthill, and Mr Alexander Aitkenhead, and Monro, (mentioned 12th of November 1678;) the Lords, after a long debate, religiously adhered to their former decret *in foro*; and found all now proponed either formerly proponed and repelled, or else then competent and omitted; and so repelled it, and refused to reduce their decret, unless they condescended on nullities, informalities, or trinqueting in false extracting. *Vide 8th Dec. 1682, Paton*. Yet see the contrary done for the *Marquis of Queensberry*, 20th Dec. 1682. *Vol. I. Page 195.*

1682. November 16. SIR JOHN NISBET of DIRLETON and SIR JOHN SETON of GARMILTON *against* ANDREW MARJORIBANKS, &c.

SIR John Nisbet of Dirleton, and Sir John Seton of Garmilton, as creditors to Mr Andrew Marjoribanks, pursue a reduction, against him and his children, of a disposition he had made, giving them the fee of his lands, and declaring their succeeding or meddling should infer no behaviour, or passive title on them.

The Lords reduced it as fraudulent.

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1682. November 21. WILLIAM GAIRDEN and SIR JAMES KEITH *against* IRVINE of DRUM.

IN the competition arising on the process of maills and duties pursued by Mr William Gairden, minister in Edinburgh, and Sir James Keith his cedent, between them and Irvine of Drum; the Lords, upon Castlehill's report, brought in Keith's comprising *pari passu* with Jousse's which Drum had acquired in; because, though it was neither within the year and day before nor after it, yet they found it sufficient that it was deduced and led before the first effectual comprising, and its priority in date before the first said effectual apprising ought at least to give it the privilege of *pari passu* with that whereon charge and infestment had been first taken.

This has been oft so decided. And they found Gairden and Keith were not instantly obliged to pay down their proportional parts of the expenses of the said preferable apprising and its infestment, ere they could have the benefit of coming in *pari passu* with it; but that they might allow the said preferable appriser to possess and uplift the maills and duties aye and until he were paid of these charges and debursements; and then, after that, brought them in *pari*

passu for the remnant: but if Drum would not possess, then they preferred Gairden, he paying Drum his expenses out of the first end of his intromission.
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1682. *Nov. 29.* EUPHAME SETON, Lady Kirklands, *against* THOMAS BUTTER.

EUPHAME Seton, Lady Kirklands' action against Thomas Butter, tutor to her son, and executor to her husband, being reported by Castlehill; the Lords preferred the relict pursuer to her husband's creditors, not only *quoad* the funeral expenses, which is uncontroverted in law; but also for her mournings, he being of that rank and quality that his wife might wear them. *2do*, For the servant's fees. *3tio*, For the entertaining the family to the next term after his death; and *4to*, For the expenses of her in-lying of a posthumous child, though the same fell to be after the term immediately subsequent to his decease, and so fell when she was entered to her own jointure.

Which last they had decided before, in 1675, in Agnes Wilkie's case against Morison; but *quær.* if under this she may claim the expense of the child's nurse's fee. And the Lords having remitted to Castlehill the auditor to consider the accounts given in by the relict, and to modify the same as he saw just; upon his report they modified to her 900 merks; she allowing, in the first end of it, what provisions she had in the house at the time of her husband's death, and any victual she received either then or since, providing it was not in payment of her jointure; and they found both the aliment to the term due, and that term due for her jointure, seeing she might lose a term by her dying before Whitsunday or Martinmas.

I find the Lords have allowed relicts' mournings even where the husband has died *obæratu*s with more debt than their estate could pay; as in the case of Lady Kincardine and Lady Boggie.
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1682. *November 29.* SIR ANDREW DICK *against* ROBERT DEANS.

THIS was an advocacy from the Commissaries of Edinburgh, where Sir Andrew pursued Mr Robert Deans for slandering him, and stealing away and murdering his good name and reputation, by calling him a *belted*, *i. e.* in one sense, a whipped knight, for stealing some Scots records out of the Tower of London, the time of Oliver Cromwell's usurpation. Mr Robert's reasons of advocacy were: *1mo*, He was a member of the Session; *2do*, the Commissaries had committed iniquity in sustaining process, after he had debarred Sir Andrew Dick with horning.

ANSWERED,—The first was a declinator; and was not competent now, after he had proponed peremptors. *Item*, The privilege of advocates was only in civil cases, but not in slanders, where the Commissaries, as *judices Christianitatis*, were only competent *in prima instantia privativè* of the Lords aye till they had