

1669. *June 10.* LADY DUNDIE *against* Her TENANTS.

MY Lady Dundie being infeft in an annual-rent of ten chalders of victual, out of the Maines of Dudhop, *in anno* 1659, in contentation of former infeftments granted to her in 1650, 1651, and 1654, as remuneratory of the provisions contained in her contract of marriage in 1647; and pursuing a poinding of the ground; there is compearance made by Mr. James Brisbane and another creditor, both annual-renters, and infeft before the 1659, who contended for preference to my Lady; who urged, that her husband's possession was her possession before the 1659, and that they behoved to allege they were in possession before the 1650, 1651, &c. to which her infeftment in 1659 ought to be drawn back, as to the point of prelation of possession.

The Lords found her husband's possession her possession: but that the infeftment in 1659 could not be drawn back; in respect she had renounced all former infeftments, and accepted that ten chalders, &c. and the lands of Inverkeithing, in full contentation of all.

The information of this I have.

*Act.* Lockhart and Lermonth. *Alt.* Sinclar and Dunmuire.

*Advocates' MS. folio 60.*

1669. *June 15.* HAY of Knockhoudie *against* JOHN LITTLEJOHN.

[*See the prior part of this Case, supra, page 428.*]

JO. LITTLEJOHN having comprised the liferent of a tenement of land, called Babylon, in Leith, which being ruinous, fell and damnified the neighbour's tenement in 600 merks; for the which, the neighbours got sentence against the said Littlejohn, compriser of the liferent, reserving action against the heritor, as accords: and the heritor being convened, conform to this reservation,

The Lords found the liferenter and the compriser not liable in reparations of this kind, *et quæ habent causam perpetuam*; but only to keep the house water tight and wind tight; and therefore decerned.

*Act.* Lockhart and Dinmuire. *Alt.* Sinclar and Chalmer.

*Advocates' MS. folio 60.*

1669. *June 15.* KINLOCH *against* BROWN of Gorgie-mill.

IN a case betwixt Brown of Gorgie-mill and Kinloch, it came to be debated Whether a creditor obliging himself to use no execution against the debtor during his lifetime, may serve an inhibition against him, yea or no; and if that will come under the name of execution, or only of a diligence. It was found he might inhibit.

*Advocates' MS. folio 60.*