

not be enlarged; and a horning has all its civil effects, notwithstanding of a protection, save only caption; so that annualrent will be due thereon, his escheat may be gifted, and so of all the rest.

*Advocates' MS. No. 316, folio 127.*

1672. *February 6.* Mr. JOHN BAYNE of Pitcarly *against* Mr. GEORGE SCOT of Pittedy.

THE Lords having advised the debate betwixt Mr. John Bayne of Pitcarly and Mr. George Scot of Pittedy, with the depositary, Mr. Robert Reull, his oath, they found the minute obligatory, and ordained the same to be given up by Reull to Pitcarly; notwithstanding it was alleged that the same was not a delivered evident, but only consigned till next meeting, at which time sundry things controverted betwixt them were to be communioned on; so that it being an unconsummated bargain, there was *locus pœnitentiæ*, likeas he did resile *debito tempore*; see Balmanno's practiques *verbo* Penalties, page 224, *et seq.*; as also, he offered to pay the penalty to be freed of the bargain, which penalty was 4000 merks; which the Lords repelled, as being over and above the performance. See it so decided on the 5th of *March*, 1634, *Murray* against *Lord Blantyre*; *March 19, 1630, Crichton*. But in regard, it was controverted betwixt them, whether Pitcarly should take, in part of the price, a bond of 20,000 merks, granted to Mr. George, by William Calderwood, who acquired the lands of Pittedy, seeing the same was clogged and affected with sundry conditions, and expressly that William Calderwood should retain it ay and while the lands of Pittedy were disburdened of the incumbrances condescended on, which are not yet purged; the Lords recommended to two of their number to consider how the said bond might be made effectual to Pitcarly, so that he might accept it in part of the price of his lands. See the information of it beside me.

*Advocates' MS. No. 317, folio 128.*

1672. *February.* SIR GEORGE GORDON of Haddow *against* The LAIRD of COCKBURNE.

ABOUT the beginning of this month was the debate betwixt Sir George Gordon of Haddow and the Laird of Cockburne, wherein the case was as follows; Bailie Mercer being debtor to Haddow in the sum of 3000 merks, and Cockburne being bound for Mercer in sundry considerable cautionaries, he obtains for his relief an assignation to a bond of 4000 merks, amongst many other bonds due by the Laird of Cragievar to Bailie Mercer. Haddow hearing the Bailie was breaking, and had disposed on the most part of his estate, and particularly on that bond, he causes draw an assignation of Bailie Mercer's bond of 3000 merks to him in favours of Cragievar, Mercer's debtor, and delivers the same to Mr.