

1683 and 1684. SIR JOHN SEATON of Garmilton *against* SIR ROBERT SINCLAIR of STEVENSTON.

1683. *March 14.*—BETWEEN Sir John Seaton of Garmilton, and Sir Robert Sinclair of Stevenston; the Lords found Garmilton could have no other servitude on Stevenston's land for his mill-dam, save what he has been in possession of; and assoilyied Stevenston from damages. But see this altered 30th current. *Vol. I. Page 225.*

1683. *March 30.*—The Lords alter the interlocutor of the 14th current, and found Stevenston liable to refund and make up Garmelton's damage, that the water ran not towards his mill as it was wont to do: though all the servitude which Stevenston owed him in law was only a *nuda patientia* through his ground, and that the channel of the water was diverted *casu* and by speat, without any fact or deed on Stevenston's part, and could not be returned to the former channel. *Vol. I. Page 231.*

1684. *January 11.*—Sir Robert Sinclair, upon a new advising, is assoilyied from the damages libelled by Sir John Seaton of Garmilton, as done to his mill. Anent which, *vide* 30th March 1683. *Vol. I. Page 259.*

1684. *January 12.* JEAN CALLANDER and her HUSBAND *against* SIR ANDREW BIRNY, LORD SALINE, &c.

THE cause, Jean Callander, and her Husband, against Sir Andrew Birny, Lord Saline, and his Children, took up the whole forenoon in advising; and the Lords, from the writs and depositions, repelled the defence founded on Gray of Wariston's apprising, assigned to Torwoodhead, and the gift of escheat; in respect of the answer, that Alexander Short was denuded in favours of the Lord Saline, before the date of the apprising and denunciation to the horn: which they find proven, by comparing the date of the said writs with Saline's rights, as it is narrated in the decret of preference produced; as also, they repel the defence founded on the certification, in respect the bond was produced before the said decret of certification was extracted; and repel the defence founded on the decret of preference produced, because they find, by that decret, that the defenders were only put in possession till the rights were cleared; and repel all the other defences founded on Oliver Murray, her last husband's intromission with the money or rents belonging to James Short, in so far as the same is obruded to the pursuer's infestment of liferent of the annualrent of the bond of 2400 merks since her husband's death; which they find her husband could not innovate nor discharge to her prejudice, the bond being originally granted to her in liferent, and the husband standing debtor to her before by her contract of marriage, in so far as she is not satisfied otherways of the same. And likewise repel the defence founded on Robert Andrew's money, paid to the husband; in respect of the answer, that Oliver the husband had right from a third party, and that there is no trust proven: but prejudice