

1687. February 9. The EARL of CASSILIS against LORD BARGENY.

THE case of the Earl of Cassilis against Lord Bargeny was reported by Boyne. It was a declarator of non-entry. ALLEGED,—The Earl was obliged to receive Girvanmains, Bargeny's author, and his heirs and assignees, by a precept of *clare constat*; and my Lord Bargeny was his assignee, and so *exceptione doli mali repellitur*; and non-entries are odious, *et ejus putamina sunt recidenda*. ANSWERED,—Nothing stops non-entry but *feudum plenum*; and Cassilis ought to be free of his bond, because he offered, by way of instrument, to implement it to Kennedy of Girvanmains, and was refused; and, he being now dead, it is imprestable to receive him.

REPLIED,—His cedent's collusion or contumacy cannot prejudice him, and it may be supplied *ex officio nobili per æquipollens*.

The Lords found the lands in non-entry, notwithstanding of the bond.

Then alleged, if the Earl do not perform, he must give back the composition paid, as *causa data non secuta*. 2do, This being *probabilis et justa causa litigandi*, it must excuse and exoner for bygone non-entries preceding the interlocutor.

*Vol. I. Page 446.*

1687. February 15. MATTHEW COLVIL, Writer.

IT was on a certain occasion remembered, that, in 1678, in a cause of Matthew Colvil, writer, the Lords found that agents' disbursements bore annual-rent; and so does any advanced money, though it be not given as annual, which is only due *lege vel pacto*, but is liquidated as damage and interest *pro lucro cessante*.

*Vol. I. Page 448.*

1687. February 19. LADY BALGON, Sir David Dunbar's Relict, Petitioner.

THE Lords, upon a bill, and Drumcairn's report, modified to the Lady Balgon, relict of Sir David Dunbar of Baldune, 2500 merks, for her mournings, and aliment of the family, from the 12th of December last, when he died, to Whitsunday next, allowing in the fore-end what she has got already.

*Vol. I. Page 448.*

Duke Hamilton, whose son was married to Baldune's grandchild, stormed at this; and craved deduction for what provisions were laid in the family at his decease, she having none but two servants to maintain. Her grandson, Sir George Suty, obtained this from Castlehill, his father-in-law.

*MS. No. 769, Page 323.*