

December 30, 1692.—Robert Stewart, messenger, against the Master of Salton, mentioned 30th Nov. 1692. The Lords having considered the condescence of his damage given in, they inclined to think the sum was included, and due *nomine damni*; but in regard they had already found the letters not obligatory on the Master to pay the sum; therefore they declared the import of the letters to be this, that he should not make use of the gift of his grandfather's liferent-escheat, or any other right in his person, to exclude or debar Stewart from payment. For having promised to endeavour his payment, he could not obtrude any right in his person to obstruct it; and found if he had hitherto stopped his access to his grandfather's liferent-lands, then he should be simply liable, and also found him liable by the letters *in quantum* he was *lucratus* by the sale of Auchirie's, above what paid Jameson of Parkmur's debt; some inclined to make him simply liable, because by the gift of escheat he had intromitted with more than would pay this debt of Mr Andrew Massie's; but the Lords by a plurality made it only *a non repugnantia*, and that the bygone were *fructus bona fide percepti*. But even as to the liferent in time coming, those in the back-bond may say, they will not let the rents appointed for their payment be misapplied to Stewart's debts, and the grandfather may die before a second gift is obtained, to frustrate Stewart's payment.

Vol. I. page 540.

1692. *December 30.* SIR ROBERT BAIRD *against* The EARL OF ABERDEEN.

SIR ROBERT BAIRD against the Earl of Aberdeen. The Lords preferred the Earl's right upon the disposition; and found Sir Robert Baird's adjudication, being against Arthur Udney, before he had any right, (Jack, his mother-in-law, and the proprietor of these fishings being then alive,) it could convey to Sir Robert no right; and that the supervenient title of his being husband to the apparent heir, after Jack's death, could not access to Sir Robert, because *jus accrescendi* did more take place in voluntary rights than in legal diligences of adjudication, or the like. And so they moved the second ground, *viz.* That Arthur Udney never had right *jure mariti*, the same being excluded by his good-mother's disposition to Margaret Douglas, her daughter, and Arthur's wife, in liferent, and to Arthur's children by her in fee, with seclusion of his *jus mariti*, and creditors from any interest in it. Which the Lords had sustained in the year 1691, in George Lawson's process against the said Arthur.

Vol. I. page 541.

1693. *January 3.* DUKE OF HAMILTON *against* HAMILTON of Wishaw.

IN the cause between the Duke of Hamilton, and William Hamilton of Wishaw; the Lords considered, though the years of the taxation expired in 1671, yet there were several arrears to be ingathered, which were not brought in for some time thereafter; which made it necessary to keep still the taxation chamber; and found the Duke liable for the mail of it from Whitsunday 1672, to Whitsunday 1676,

and that Wishaw was not bound to relieve him thereof. Some of the Lords inclined to take a probation, before answer, of the way and manner of the Duke's and Wishaw's possession of that chamber. Others were for finding the Duke liable for the chamber-rent so long as Wishaw was paying him in the rests, the last partial payments being in March 1674. But the plurality assolyied Wishaw.
Vol. I. page 541.

1692. *November 23*, and 1693, *January 3*. KENNEDY *against* HANNAY.

Nov. 23.—BETWEEN Kennedy and Hanna, Deacons in Ayr, the Lords ordained the custom of that Burgh to be tried, if they fined their Tradesmen for absence from their meetings, and in how much; and found it relevant that he came after his citation, the night before the meeting, and made his excuse to the Deacon-Convener for his absence, and it was accepted.
Vol. I. page 521.

1693. *January 3.*—Between Hannay and Kennedy in Ayr, mentioned 23d November 1692. The Lords found the fine of twenty pounds Scots imposed by the Deacon-Convener upon him for his contumacy and absence not exorbitant nor illegal, and that, by the customs of Burghs, they might fine their absent members.
Vol. I. page 541.

1693. *January 4*. HELEN MURRAY, Lady Kinuchar, *against* WM. BETON.

DAME Helen Murray, Lady Kinuchar, pursues Mr. William Beton, advocate, on an agreement, for communicating their rights upon the lands of Etherny, and to count to her husband for a part of the rents effeiring to his sum; and he having sold the lands to Watson, so that the annualrent of the price exceeded the rents of the lands, and offering to hold count to her effeiring to the rents, because he got a greater price in contemplation of the house and gardens, and other conveniences.

The Lords found he was liable to count conform to the price, as a *surrogatum* coming in place of the rents of the lands; and brought them in *pari passu* effeiring to their sums.
Vol. I. page 541.

1693. *January 4*. SIR WILLIAM DOUGLASS of Cavers *against* ELLIOT of Stobs.

BETWEEN Sir William Douglass of Cavers and Elliot of Stobs. The Lords found no process, upon an execution of a summons of declarator of nonentry, as vitiate in the date. Some were for annulling it *in totum*; but it was sustained only *ab hoc tempore*, for little informalities, and nullities cast such odious pro-