the Lords would modify the account; but refused to open the decreet on the nullities and informalities pretended against it. *Vol. I. page* 544.

1693. *February* 9.—THE Lords re-advised Sir Thomas Kennedy's reduction against Govan about the circumvention done by Cornelius Neilson on Bonnar's heirs; anent which *vide supra* 12th January 1693. And sundry were for finding it a nullity in the decreet, that it bore the factory was reduced as well as the contract and ratification, and there was no minute nor signature of process ordering and warranting that. But it being urged, 1*mo*, The factory fell in consequence with the other writs reduced; 2*do*, There are many extensions in style that need no warrant; the Lords demurred to find it a nullity, to cast loose and open the whole decreet: but allowed the parties, before answer to that nullity, to be heard on the material justice of the cause; not that they turned the decreet into a libel, but ordained them to debate the point *tanquam in libello*, which is on the matter all one thing; as appeared both in the opening of Cardrosse's decreet on Kincarden, and of Queensberry's against Douglass of Monsuald, and Lilleas Currier.

And here there occurred a debate, whether an informality of this nature opened the decreet *in totum*, or only *quoad* that article of the factory. For the President argued, if the decreet were kept fast as to all the rest of the points, it might be a great prejudice; because the Lords not being Judges to reduce their own decreets on iniquity, they have no other way to revise these decreets wherein injustice has been committed, except allenarly by the help of some nullity in the decreet; which would not effectually answer that end, if it did annul that decreet *in totum;* as was found in 1691, in the *Earl of Aberdeen's* decreet of the Mint against my *Lord Lauderdale*. And *l.* 27. *D. fam. ercisc.* favours this opinion, that *sententia vel stat vel cadit in totum, et non potest pro parte valere et in alia parte non valere*, being *quid indivisum;* but see *l.* 41. *eod. tit.* where *judex appellationis* may rescind the inferior Judge's sentence in one point, and ratify it in another. *Vol. I. page* 557.

1693. *February* 10. GEORGE BAIKY of Greentoft *against* JAMES BAIKY of Tankerness.

THE Lords found the said George, the uncle, had no right to redeem the estate from James, his nephew, on paying him ten merks, conform to the father's tailyie; both in regard the father could not be so unnatural as to disinherit his son without a cause; so this reversion was only a deed to be a check and an awband, if the boy should prove vicious or profligate; as also, that absolute confidence and trust was not placed in the said George, but he was to redeem with the consent of such friends as Mr. William, the other uncle, should name; and, that not being done, his power ceased. And on thir grounds, complexly, the Lords assoilyied from the declarator of redemption. *Vol. I. page* 558.