

ascribe his possession to the annualrents of Crawford's sum, for years subsequent to the 1681, which was the last year of his possession, though the compensation was not proponed nor applied by Linthill till 1687. And the Lords did not regard whether Linthill intimated his right before, or whether Sir James knew of it, seeing she had a decreet of poinding of the ground on her infeftment.

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1694. *January 10.*—Sir James Cockburn of that ilk, against Home of Linthill, mentioned *supra*, 18th January 1693. The Lords thought the intimation made of the assignation to Sir James was not sufficient to put Douglas of Lumsden, the debtor and heritor, *in mala fide* to pay these years assigned to Elizabeth Lyell, the lady, and Linthill's cedent: but laid hold on that allegiance, that the lady's discharge produced did not proceed upon payment of money for these years assigned; but the assignation was held and reputed as payment, and so allowed in the count betwixt them. But they would not admit this to be proven by the writer and witnesses in the discharge, but only by Lumsden's oath, (to whom the discharge is granted;) but permitted them to confront him with the lady and the witnesses, to refresh his memory, at the time of his deponing, if they thought fit to cite them for that effect.

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1694. *January 11.* SIR WILLIAM KER *against* DAVID HEPBURN OF HUMBIE.

CROCERIG reported the case of Sir William Ker, Director of the Chancery, against David Hepburn of Humbie, on a decreet, holding him as confessed upon a promise of payment. The generality of the Lords thought the grounds urged by Humbie for purging his contumacy, and being reponed to his oath, very plausible, *viz.*—That, at the first term assigned, he was indisposed, and keeping the house, though he was recovered before the circumduction; that the act was put up in the minute-book, not in Sir William's name, but in Mr John Slack's name, and that, before the decreet, Mr John Slack was dead, who was the principal pursuer; albeit there was also a conclusion in the summons at Sir William's instance, that he ought to be relieved of that cautionary: yet they thought fit to delay the taking in the report, till it was tried if the parties would settle in the terms of the transaction Sir William had made with Slack, whereby he had componed the debt for near the half; seeing he was the principal debtor's brother and apparent heir, and only pled that his niece, the Lady Livingston, as heir of line, was not first discussed, and that his brother was interdicted; which did not seem so favourable a case.

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1694. *January 12.* GEORGE HOME OF KYMERGHAM *against* The EARL of HOME.

THE Lords advised George Home of Kymergham's cause against the Earl of Home, wherein the Lords adhered to their former interlocutor, 16th of February 1692, finding that the posterior articles were an innovation of the first contract; and though the Earl was at first personally bound for payment of the annuity