men or not. But, if he could take in unfree tradesmen, and set them houses to work to others than himself, the Lords delayed to give answer till the case should exist. *Vol. I. Page* 614.

1664. *February* 23. The MASTER of BALMERINO *against* SIR JOHN INGLIS of CRAMMOND.

THE defence was, *Minor non tenetur placitare.* ANSWERED,—1*mo.* It does not hold in redeemable rights of property. 2*do.* It takes not place but where either the defunct, or he who propones it, were in possession: but *ita est* this is only an infeftment of annualrent, redeemable; and they are not in possession.

The Lords were generally clear, that redeemable rights were *hæriditas paterna*, as well as others, and that a minor's whole estate might consist of such rights; and, by omitting defences, he might be ruined in the one as well as the other; and that they behoved to say, that the defunct was, at least, in possession. But, in regard it was alleged there was a contrary decision, in a reduction pursued by Deans of Woodhouselee against Sir William Primrose, finding the brocard took not place in redeemable rights, though, in that case, there was a back-bond declaring the trust; therefore, before decision, they appointed that former practick to be produced. And, however this axiom defends against discussing the reasons of reduction, yet it does not stop but they must satisfy the production. *Vol. I. Page* 614.

1694. *February* 23. The LORD HALTON, and SIR ROBERT MILN, *against* LORD YESTER and his CHILDREN.

THE debate was anent the bygone rests of rents, due by the tenants, or in the factor's hands, preceding the late Earl of Lauderdale's decease, in June 1691, Whether they fell under his executry, or belonged to his son Halton, and Sir Robert Miln his assignees; for this onerous cause, that they were applied for defraying his funeral charges; or, if they belonged to Yester, who was infeft in the lands, on his adjudication under the Great Seal; and the other adjudgers.

ANSWERED,—If Yester's annualrents, preceding Whitsunday 1691, when Lauderdale died, were then owing, then it was just he should affect these rents, due preceding that term; but they offered to prove he was paid till then; and, by the decreet of ranking, Yester had no preference but for his annualrents allenarly.

REPLIED,—The payment I got was not out of these rents, but out of years subsequent to 1691; and, therefore, in so far as I want any annualrents of years since Whitsunday 1691, I must recur to make these rests liable for the same.

The Lords found, as to 10,000 merks Halton had paid of these annualrents to Yester, that he succeeded in his preference; and declared these rests subject to him for reimbursement of that sum. And, as to the remanent bygone rests, found Halton and Sir Robert also preferable, in so far as Yester and the other adjudgers were satisfied of their subsequent years' annualrents: but, if Yester

fell short, then found, that he had recourse to affect the bygones, to make up the deficiency; though some contended, that it behoved to be interpreted *singula singulis*, that each year's rent should pay that year's current annualrent.
Vol. I. Page 614.

1694. *February* 23. JAMES LIVINGSTON, Merchant in Edinburgh, *against* ROBERT and WILLIAM WOOD, and FISH.

THE Lords found the certification null against Mr William; because, though, in the decreet, Mr William Beton compears as procurator for both William and Robert, the father and son, yet, by the warrant, it appears he only took a day for Robert; and, therefore, they reponed Mr William: for, though a certification be a most sacred tie, and one of the greatest securities of the lieges, with a decreet *in foro*, yet, if there be a nullity, it may be loosed. But it is no reason because it is in absence; for then one would never compear and produce, but let certification pass. *Vol. I. Page* 615.

1694. *February* 23. LYON *against* WILLIAM HOUSTOUN and JOHN HEPBURN.

MERSINGTON reported the competition for the stipend of Orr, near Kircudbright, between Mr Lyon, the late episcopal incumbent, and Mr William Houstoun, suspected to be a papist, who preached sometimes there, and Mr John Hepburn, the field Cameronian preacher, who claimed it by a call of the people, and an act of the presbytery of Dumfries, and his serving there.

The Lords preferred him, notwithstanding that the presbyterian church was threatening to excommunicate him as a schismatic, it being instructed that he was one of the presbyterian communion. *Vol. I. Page* 615.

1694. *February* 23. SIR HUGH CAMPBELL of CALDER *against* The MARQUIS of ATHOL and the EARL of DINMORE.

SIR Hugh Campbell of Calder against the Marquis of Athol, and the Earl of Dinmore, his son, for re-delivering his bond of £10,000 Scots, as *causa data non secuta*, and as annulled by the Act of Parliament 1690, rescinding fines and forfeitures; in so far as it was granted to get a deputation of lieutenancy from Athol in 1685, for trying his own vassals and tenants in the Isle of Ilay, who had risen and joined with Argyle in his invasion; whereon arose two questions. The *first* was, If this case fell under the compass of that Act of Parliament; and, *secondly*, What should be the manner of proving it. As to the *first*, the Lords found, that if it could be made appear that it was granted for that cause,