

to any of them, but subducted from the years of prescription ; which is odious. But, in regard the preparative was of importance, it was ordained to be farther heard.

*Vol. I. Page 621.*

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1694. *June 22.* PRINGLE of RENNISTON *against* JAMES RAIT, Merchant in Edinburgh.

In the charge, at Pringle of Renniston's instance, against James Rait, merchant in Edinburgh, and his bill of suspension, reported by Crocerig, the Lords repelled this reason, That he offered to prove he entered all his goods at Kelso, and yet the *transire* he got did not contain the whole, whereby the goods, not mentioned, were seized by the waiters at Edinburgh ; and the bond being for the custom of these goods, he ought to have deduction effeiring to his damage.

The Lords refused to pass the bill, and found it not probable by witnesses, but only by Renniston's oath or writ.

*Vol. I. Page 621.*

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1694. *June 23.* LORD JOHN HAMILTON *against* SIR HUGH CAMPBELL of CALDER, &c.

THE Lords having rejected an article of 5600 merks, alleged paid by Calder, as cautioner, in regard it was instructed that the principal tacksman had paid it before ; and he being only a cautioner, should have known that, and not have paid till he had informed himself, or got an incident diligence for proving it ; and the principal was not obliged to intimate his having made payment to him : a bill was given in against this interlocutor, by Calder ; and, founding upon the common law, *l. 42. D. de R. J.* that *fidejussores eorumque hæredes justam ignorantiam allegare possunt* ; and *l. 29. D. mandati* is positive that the debtor ought to have acquainted his cautioner that he had paid, that he might not be ensnared ; and *Mavius, Decis. Lubec. anno 1655*, shows it was so decided there.

The Lords adhered ; reserving his recourse against Dumfermline, who received twice payment, as accords ; seeing the cautioner's second payment could not be said to be *bona fide* made.

*Vol. I. Page 621.*

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1694. *June 26.* ANDREW CHALMERS *against* ROBERT KER.

MERSINGTON reported Andrew Chalmers, against Robert Ker, in Dysart. The Lords adhered to their former interlocutor, and found the minute of contract obligatory ; and that the craving the pursuer's oath of calumny supplied the nullity of the not-designation of the writer and witnesses, if he acknowledged the subscription ; and that a minor, with his curators, might lawfully dispone lands, unless he could subsume lesion.—See Durie, *2d February 1630, Hamil-*