conjunctly and severally, in a bond; Cesnock, being distressed for the whole, takes assignation, and pursues Bargany for two-thirds; who alleged payment; and, because it was a public debt, he produced an incident *in termino*;—which the Lords sustained not; because it bore no warrant to cite Cesnock the principal party, and the executions were, within forty-eight hours, by one person, in Kyll, Renfrew, Fyfe, and Edinburgh, and so suspected; but they superseded extract of the decreet to the first of November.

Vol. I, Page 331.

1666. *February* 13. The LAIRD of WEDDERBURN *against* WARDLAW.

WEDDERBURN pursues a reduction of a feu granted to Wardlaw, *ob non solutum canonem*, by virtue of a clause irritant in the infeftment. The defender offered to purge, by payment at the bar, and alleged several decisions that it hath been so allowed. It was answered, That was only the case of a reduction upon the Act of Parliament declaring feus null for not-payment of the feu-duty; but, where there is an express clause irritant in an infeftment, that cannot be purgeable at the bar; else such clauses should be useless, seeing, without these, *de jure* the feu-duties behoved to be paid at the bar, or otherwise the feu annulled. The Lords found, That there was a difference betwixt a clause irritant, and upon the Act of Parliament; and so would not admit of purging at the bar simply, unless the defender condescended upon a reasonable cause *ad purgandam moram*; and, therefore, ordained them to condescend.

Vol. I, Page 354.

1666. *February* 16. SHARP of HOUSTON *against* GLEN.

GLEN pursues for mails and duties of some lands. Houstoun compears, and alleges, That he has right to these lands, by an apprising expired. It was answered, His apprising was null; because it proceeded on four bonds, the term of payment of one whereof was not come the time of the apprising; and so, not being due, the apprising was void *quoad totum*. It was answered, The sum was due, albeit the day was not come; and so being but *plus petitum tempore*, he was willing to admit the apprising to be longer time by the double, redeemable after the legal were expired, than all the time he apprised before the hand. The Lords found the apprising void as to that sum. Whereupon occurred to them to consider whether the apprising should fall *in totum*, or stand for the other three bonds; and, if it stood for these, whether a proportionable part of the lands apprised, effeiring to the bond, whereof the term was not come, should be found free, or if the rest should affect the whole lands, as if for these only the apprising had been led. Wherein the Lords were of different opinions, and recommended to the reporter to agree the parties.

Vol. I, Page 358.