of the mill, upon her contract of marriage and infeftment; and, in case she be debarred by the wadsetter, then to have recourse upon the warrandice against the Earl, as representing.

The Lords did repel the defence; and found, That the summons being referred to the defender's oath, that he certainly knew of the distress; and that the wadset was prior to the contract of marriage, and so would maintain the wadsetter's possession, if he were pursued.

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1675. *July* 27. JOHN BROWN, Bailie in Haddington, *against* ROBERT FORREST, Merchant there.

IN a reduction of a decreet-arbitral, decerning John Brown to take burden for his daughters, to cause them renounce their right to some acres in Haddington, to which they were provided by George Brown, in fee, and their father only in liferent, upon this reason,—That the decreet was *ultra vires*, and without any ground of law, the pursuer never having submitted for his children; but only all differences betwixt him and Robert Forrest, the defender:—

It was ANSWERED, that the children's right being granted to them when they were infants, *et in familia* with their father, and had no means to acquire any right themselves; which disposition was after that George Brown, the granter thereof, was debtor to the defender; their father having submitted all differences, was justly decerned to take burden for his children, to cause them renounce: wherein no iniquity could be committed, seeing, in law, they might be compelled to do the same.

The Lords did reduce the decreet-arbitral, as being *ultra vires;* the submission being only by the father, and not as taking burden for the children: especially he having a distinct right of liferent, which was then in question, and whereupon he defended *in judicio possessorio:* but they reserved to George Forrest to reduce the daughters' right, as accords.

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1675. *November* 12. The COUNTESS of ERROLL *against* The EARL of ERROLL.

THE Countess of Erroll, being provided by her contract of marriage, to the barony of Esselmount, by Gilbert, Earl of Errol, who was obliged to warrant the rental to be worth of yearly rent seventy chalders of victual, or money-rent, estimating one hundred merks to a chalder of victual;—did pursue this Earl of Erroll, as heir to the deceased Gilbert Earl of Erroll, to make up the said rental, which was alleged to be defective; because it was offered to be proven, that, the time of the marriage, the saids lands were worth, of constant yearly rent in victual and money, no less than seventy chalders, estimating one hundred merks for the chalder.

It was REPLIED, That the kains, customs, and others, being converted to near

about three hundred merks, could not be admitted as a part of the rental; because, by the contract of marriage, she being provided in conjunct-fee to the whole barony, had right to the kains and customs, by an attour, the constant rent due by the tenants; and the conversion of the said kains and customs, being only occasioned by the Earl's not living at the place of Esselmount, but at another house far distant; and the warrandice, bearing expressly the lands were worth seventy chalders of victual and one hundred merks, estimated as the price of a chalder,—it could not be the meaning of parties, neither did the words bear to accept of an hundred merks in place of kains and customs.

It was REPLIED, That the contract, giving no right to the Lady but to a liferent of victual and money-rent, without making mention of kains and customs, and the same being converted and made in a constant rent, long before the contract of marriage, the Lady was bound to accept thereof.

The Lords did sustain the defence; and found, That the Earl was not obliged to make up the whole rental, besides the money paid for kains and customs, they being converted before the contract of marriage.

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1675. *November* 13. KER *against* VEATCH.

IN a double poinding betwixt the said parties, as creditors to Sanderson, after Veatch was preferred to Peter Pallet, as to the sum of money contained in Sir George Maxwell's bond, who became debtor to Pallet in place of Colonel Stewart;—compearance was made for Ker, who ALLEGED, That he ought to be preferred to Veatch; because he had a back-bond from the common debtor, declaring, that a part of the debt due by Colonel Stewart did properly belong to him; and therefore could not fall under Sanderson's escheat, nor belong to Veatch as creditor.

It was ANSWERED, and ALLEGED for Veatch, That any such declaration or back-bond, being after Sanderson was denounced rebel, could not be respected; it being a voluntary deed, and did fall within the Act of Parliament 1621.

The Lords did, notwithstanding, prefer Ker; which seems inconsistent with their former interlocutor preferring Veatch to Pallet: seeing the back-bond and declaration was after Sanderson was denounced rebel; and was voluntary, as well as Pallet's assignation, which was found to fall within the Act of Parliament.

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1675. *November* 26. FORBES of COLLODINE *against* ROBERT ROSS, late Provost of Inverness, and ALEXANDER PATERSON.

IN a suspension of a decreet, obtained at Cullodine's instance, against the said parties, before the commissary of Inverness; for payment of their proportion of the sum of £6,500, as charges and expenses waired out by him in two actions pursued before the Lords of Session, against the Town of Inverness, in a de-