

1692. *November 22.* CATHARINE CHARTERS and her CURATORS *against* RORY M'KENZIE of Prestonhall.

MR. RORY M'KENZIE of Prestonhall being debtor, by bond, to Catharine Charters, he, a few days before Martinmas last, offered the money to herself and her Curators. They refused, because not timeously advertised to provide new hands for lending it out again; and it was not paid, nor offered precisely on Martinmas day.

The Lords found they were bound to take the money, unless the bond bore a clause of requisition; but that they behoved to get the annualrent of it since the term, if it carried to pay annualrent termly, quarterly, monthly, and proportionally. *Vol. I. page 520.*

1692. *November 22.* WEMYSS of Hoody *against* WEMYSS of Nutbank.

THE advocacy raised by Wemyss of Hoody *against* Wemyss of Nutbank, from the steward of St. Andrews, being reported, the Lords sustained the two reasons of advocacy, *1mo*, That he refused or delayed to take the pursuer's oath of calumny on the libel *in principio litis*, though afterwards he did it; seeing every one is bound to swear *quoad lis sibi justa vidit*. Yet the President thought the Judge was not bound to grant it, till some relevant allegiance was proponed.

The *2d* ground was, that the steward refused to give separate interlocutors on the defences, till he heard all they had to say; which, though it be very reasonable in a Judge to have the whole before him, yet here it appeared to be done *ex proposito* to stop and prevent an advocacy, by pronouncing his interlocutor and definitive sentence with one breath, to put him to a suspension to find caution, where he would be straitened because of the greatness of the claim. *Vol. I. page 521.*

1692. *November 9 and 22.* SIR FRANCIS KINLOCH of Gilmerton *against* SCOTT of Bonnyton.

*Nov. 9.*—THE roup of the lands of Scott of Bonnyton, pursued by Sir Francis Kinloch of Gilmerton, being heard *in præsentia*; it was objected, *1mo*, That the act of Parliament 1681 was not observed, seeing Calderclear, one of the six parish churches, was suppressed, and so no more a church. *2do*, That it was not proven he was bankrupt; and that the roup was only sought for a part of his lands, and omitted others; by which means it could never be known whether his lands could pay his debts, unless all his debts and lands were in process and instructed; and that if partial roups were allowed, this inconveniency might follow, that the most valuable part of a man's estate might be culled out, *viz.* some lands near his house, yards, and inclosures, and the rest contiguous omitted, which in conjunction may give sixteen or seventeen years' purchase, and alone without these accommodations would either find no buyer at all, or would not give twelve or thirteen years' purchase.