in 1652, then to get 1900 merks as their price, and the said L.18 per month ay till the price was paid, with L.500 Scots of penalty, by the decreet-arbitral; and all this confirmed by a decreet of the Lords in 1657, wherein Malloch deponed, and which was not *debito tempore* sought to be received, as the act of Parliament 1661 provided. And they thought, that after the price was liquidate, no more should have been decerned but the annualrent of it, whereas L.18 per *mensem* was double annualrent; yet the President and the plurality adhered to the decreet, and sustained it for all, even for the penalty, not only in respect of the decreet *in foro*, and that it was *juratum*, but that being a violent and fraudulent intrusion into Malloch's house, and a spulyie of his brewing-looms, it is not enough for the guilty party to offer to pay the price and the ordinary annualrent, but that the rest was justly added *in modum pœnæ*. But a part of the 1900 merks having been paid, the Lords by a vote found that the L.18 per month behoved to suffer a proportional abatement effeiring to the sum paid of the price of 1900 merks.

Vol. I. page 529.

1692. *November* 30, and *December* 9. SIR WALTER SETON *against* CORNWALL of Bonhard.

Nov. 30.—SIR WALTER SETTON against Cornwall of Bonhard. The Lords found the assignation given by old Sir Walter to his son, bearing to all actions and others competent to him, was not restrictive, but extended also to that reduction raised by old Sir Walter, though not specially assigned. And thought that the said Sir Walter's accepting a disposition of the lands with the burden of that bond, containing the said 25,000 merks, was not such a homologation as did cut off Sir Walter from quarrelling that bond, as being the result of an account betwixt them, in which account there were gross and palpable errors. But in regard the bond did not relate to the account, but bore borrowed money, therefore, they found it only probable *scripto et juramento* of Bonhard, that the cause of the bond was a fitted account. And that being proven or acknowledged, then the Lords would consider what should be comprehended under errors; if only errors *in calculo* were to be meant, or even irrelevant and controverted articles; which the Lords thought hard to reconsider after a fitted account, else there should be no *finis litium*.

Vol. I. page 525.

December 9.—Cornwall of Bonhard against Sir Walter Seton, mentioned 3d Nov. last. The Lords found it proven that the bond was the result of an account, because, though the bond bore borrowed money, yet there was an account produced of the same date with the bond, and before the same witnesses, and which at the foot was subscribed, and bore that a bond was then granted for the balance. But having considered the homologations re-iterated since granting of the said bond, they found they were so plain, that they cutted off all quarrelling and review of the said account, upon any pretence, except errors *in calculo*, and summation of the articles and pages. The President urged the forbearing that point, whether he might, notwithstanding of these homologations, be heard against relevant, exorbitant, false, or unjust articles. But the generality of the Lords thought

him excluded from all but only errors *in calculo;* seeing old Sir Walter, who was a judicious man, did not quarrel, nor discover them in fourteen years time, but during all that space homologated them. *Vol. I. page* 529.

1692. *December* 9. HELEN MIRK *against* BRUCE of Kinnaird.

HELEN MIRK against Bruce of Kinnaird. He having extracted a decreet assoilyieing him, on his consigning the principal sum, and 200 merks of expenses; and she having raised a reduction of it, and calling for the grounds and warrants of the decreet; and some of the interlocutors being amissing, she urged for getting the extract of her certification.

Kinnaird ANSWERED, That his decreet *in foro* could not be taken away for want of the warrants, which might fall by through the clerk's servant's negligence, or be abstracted by their fraud. The President thought, where decreets were impugned *ex intervallo,* they should not be declared null for want of the grounds; but if it was questioned *de recenti,* they were bound to produce them, but the point being of general concern to the whole lieges, they resolved to hear it in their own presence, and, in regard the woman was poor, and not able to employ the best advocates to plead it, the Lords would nominate some of the most eminent for that purpose; for they considered, if the abstracting the minutes and interlocutor would annul decreets, the lieges who had recovered sentences *in foro* after great expense and trouble, had no security at all.

In this case, Kinnaird offered to prove the existence of these interlocutors, freeing him from the annual-rents, on his consignation, by the oath of my Lord Pitmedden, the reporter, and of the extractor, and others; but the Lords, as formerly, in Heugh Wallace's case against my Lord Forrester, thought it a dangerous preparative, to make up the tenor of interlocutors by any witnesses whatsoever. *Vol. I. page* 529.

1692. *Nov.* 3, and 15. *Dec.* 10. JOHN HAMILTON and KEITH'S Relict, *against* BEATON of Balfour.

Nov. 3.—JOHN HAMILTON, Brewer in Edinburgh, and the relict of Mr. George Keith, against Beaton of Balfour. The Lords repelled the compensation proponed on Keith's debt, because the 2000 merks bond was conceived to him and his wife in liferent, and so his debts could not prejudge her liferent, constituted by her contract of marriage. But she being provided by her contract to 1200 merks yearly, the question occurred, whether she might affect the 2000 merks for her jointure, so as to make the stock liable as long as it lasted; or if she could only reach the yearly annualrent of the 2000 merks. And the Lords inclined to the first. *Vol. I. page* 516.