you have disponed to me, the creditors will object extinction by your's, my author's, intromission foresaid. Yet sundry of the Lords thought this was no ground to cause Sir John presently count and reckon with him, to deduce off Kilconquhar's bond of 38,000 merks, but was only a ground whereon he should be obliged to warrant him in case of distress. But the Lords adhered to their interlocutor of the 22d December last. *Vol. I. page* 557.

1692 and 1693. JOHN SCOTT of Sinton *against* JOHN GRIEVE of Pinackle.

1692. *Nov.* 18.—THE Lords repelled the first reason of reduction of the Sheriff's decreet, that he had declined him, in regard he dwelt not within the jurisdiction; not so much on account of the first answer, that although he dwelt *extra territorium*, yet the land in question lay within the shire; nor of the second answer, that he had passed from his declinator by compearing, proponing defences, and deponing; for it was thought if any wrong was done, his compearing did not so homologate but the decreet might be turned into a libel. But it was repelled in respect of this third answer, that he was cited by the Lords' letters of supplement, which were ordained to be produced; though some alleged supplements can only be for citing parties for their interest, but not principal defenders. As to the second reason of reduction, viz. That the third part, possessed by him, was after mensuration of the whole; and though the marches were set in his own assertion, and so *ubi mensor falsum modum dixerit*, it should be rectified; yet that it had been so divided three years before; relevant to assoilyie him from all bygones of the excress of one hundred pound Scots, which his third part was proven to be better worth than any of the other two parts, as a *bona fide possessor;* he proving it was, conform to that division, made three years before his tack; and that he made offer of any of the parts Swinton the heritor pleased to choose.
Vol. I. page 519.

1693. *February* 9.—The Lords thought there was unfair dealing in Grieve's measuring the land, and that *mensor tenetur de dolo si falsum modum dixerit;* yet, in regard of the former interlocutor, 18th November, 1692, they assoilyied him from the excrescent duty preceding the citation, as *fructus bona fide consumpti.* *Vol. I. page* 557.

1693. *January* 12, and *February* 9. SIR THOMAS KENNEDY, *against* BANNATYNE, BONNAR'S Heir.

Jan. 12.—THE Lords having advised the case between Sir Thomas Kennedy and Bannatyne, Bonnar's heir; they adhered to the decreet *in foro*, and only sustained this process in so far as *utiliter gestum et in rem versum* to Bonnar's heirs; and ordained him to give in a condescendence on Cornelius Neilson's expenses, he had wared out *qua* factor, for the heirs; and in so far only as they were profitable,

the Lords would modify the account; but refused to open the decreet on the nullities and informalities pretended against it. *Vol. I. page* 544.

1693. *February* 9.—THE Lords re-advised Sir Thomas Kennedy's reduction against Govan about the circumvention done by Cornelius Neilson on Bonnar's heirs; anent which *vide supra* 12th January 1693. And sundry were for finding it a nullity in the decreet, that it bore the factory was reduced as well as the contract and ratification, and there was no minute nor signature of process ordering and warranting that. But it being urged, 1*mo*, The factory fell in consequence with the other writs reduced; 2*do*, There are many extensions in style that need no warrant; the Lords demurred to find it a nullity, to cast loose and open the whole decreet: but allowed the parties, before answer to that nullity, to be heard on the material justice of the cause; not that they turned the decreet into a libel, but ordained them to debate the point *tanquam in libello*, which is on the matter all one thing; as appeared both in the opening of Cardrosse's decreet on Kincarden, and of Queensberry's against Douglass of Monsuald, and Lilleas Currier.

And here there occurred a debate, whether an informality of this nature opened the decreet *in totum*, or only *quoad* that article of the factory. For the President argued, if the decreet were kept fast as to all the rest of the points, it might be a great prejudice; because the Lords not being Judges to reduce their own decreets on iniquity, they have no other way to revise these decreets wherein injustice has been committed, except allenarly by the help of some nullity in the decreet; which would not effectually answer that end, if it did annul that decreet *in totum;* as was found in 1691, in the *Earl of Aberdeen's* decreet of the Mint against my *Lord Lauderdale*. And *l.* 27. *D. fam. ercisc.* favours this opinion, that *sententia vel stat vel cadit in totum, et non potest pro parte valere et in alia parte non valere*, being *quid indivisum;* but see *l.* 41. *eod. tit.* where *judex appellationis* may rescind the inferior Judge's sentence in one point, and ratify it in another. *Vol. I. page* 557.

1693. *February* 10. GEORGE BAIKY of Greentoft *against* JAMES BAIKY of Tankerness.

THE Lords found the said George, the uncle, had no right to redeem the estate from James, his nephew, on paying him ten merks, conform to the father's tailyie; both in regard the father could not be so unnatural as to disinherit his son without a cause; so this reversion was only a deed to be a check and an awband, if the boy should prove vicious or profligate; as also, that absolute confidence and trust was not placed in the said George, but he was to redeem with the consent of such friends as Mr. William, the other uncle, should name; and, that not being done, his power ceased. And on thir grounds, complexly, the Lords assoilyied from the declarator of redemption. *Vol. I. page* 558.