

contended there was a *jus quæsitum* to the new obligant, which the creditor could not prejudge.

The Lords thought the point of moment, Whether or not all the accessory securities formerly given for the debt accresced to those who afterwards became bound for it, though not expressed. They waved the decision, but allowed the suspension to pass, if the charger would not consent to discuss summarily : for it appeared very unfavourable on the relict's part, seeing she was intromitter with her husband's goods, and so bound to relieve the Major, his cautioner, on whom she was seeking to turn over the debt. But that was *in causa* ; whereas the present question was, If they should pass the bill. *Vol. I. Page 587.*

*February 7.*—The Lords decided the charge at Sir Robert Gordon of Gordonston's instance, against Mary Stewart, relict of Commissary Wood, in Caithness, on Halton's report ; and found, Gordonston was not bound to assign her to Major Wood's bond of cautionry for her husband in the first suspension, seeing the bond of corroboration she had given to Gordonston, since her husband's death, was not relative to that bond of cautionry, nor an accessory security thereto, in contemplation whereof she had engaged. Some urged, that Gordonston had componed with Major Wood, and the charge was for Wood's behoof ; and so, though it was not competent against Gordonston, yet it might meet Major Wood. But the Lords decided *ut supra*. *Vol. I. Page 604.*

1694. *February 8.* JAMES SMITH and ALLAN and GRIER *against* CHRISTIAN BEG, Relict of ——— GRIER.

RANKIELER reported James Smith, donatar to Grier's escheat, and Allan and Grier, against Christian Beg, relict of ——— Grier. The Lords found the sum of 8000 merks, in Sir Robert Laurie of Maxwelton's hands, was heritable, and fell not under the escheat ; for, though it was in trust and under a backbond, yet it did not render it personal, nor alter the nature of the right. But found the bygone annualrents, which the rebel himself would have had, fell to the donatar. But found, if the two merchants, lesed by their two apprentices, proved that they had stolen goods from them, either by the probation already adduced before the Bailies of Edinburgh or otherwise, then the merchants might affect this heritable sum, by adjudging or arresting, for reparation of their damage ; and they would allow them their *juramentum in litem* in this case, as well as in a spuilyie. And, as to the wife Christian Beg's interest, found that the assignation given to the said sum by Martin Beg, her brother, was not to be regarded ; seeing he had emitted a prior declaration that his name was filled up in the bond merely in trust for Grier's behoof, and he had no interest in it ; which was only to be credited, and not his last assignation. *Vol. I. Page 604.*

1694. *February 8.* THE TRADES of the CANONGATE *against* The HERITORS of BROUGHTON, &c.

THE Trades of the Canongate, against the Heritors of Broughton and the

other Trades dwelling in that regality. There were mutual declarators: one of privileges, the other of immunity and exemption from acknowledging the deacons of the Canongate. The Lords declared the trades' privileges as to all living within the burgh of the Canongate, or any artificers importing or selling their goods in that place; but would not extend it to the discontinuous parts of the regality, or the grounds of their feuars and vassals, as if they could employ no tradesmen save those licensed by the deacons of the Canongate: for they thought that was only craved to be a colour for exacting money from them, though the design of incorporations was good, *viz.* that tradesmen should be answerable for the sufficiency of their work, and that they do not extortion the lieges by exorbitant prices: and found the Act of Parliament 1540, anent conduction of craftsmen, related chiefly to wrights and masons. Some urged that there might be a conjunct probation allowed, to prove custom or possession; but the Lords thought, if there had been any such use, it was not to be encouraged; and to make an act before answer would keep them still in animosity, and put them to great charges.

*Vol. I. Page 604.*

1694. February 8. WILLIAM MENZIES, Bailie of Edinburgh, *against* MRS MARY HAY.

PHESDO reported William Menzies, bailie of Edinburgh, against Mrs Mary Hay; who offered to prove, by witnesses, that an assignation he had to a debt was lying blank beside the defunct the time of his decease, and filled up since. ANSWERED by the Bailie,—That this assignation, being his own evident, given him in payment of a true debt, and now in his own hands, it cannot be taken from him but by his oath or writ. The Lords considered, that, if the subscriber of the assignation were alive, he might be examined; but, in regard he was dead, they allowed witnesses to depone *hinc inde*, before answer, how that assignation was taken out of the charter-chest, and on all other circumstances.

*Vol. I. Page 605.*

1694. February 8. The COUNTESS of KINCARDEN *against* CORNWALL of BONHARD.

PHESDO reported the Countess of Kincarden against Cornwall of Bonhard, for repairing the salt-pans now set to John Marjoribanks, he and his father having left them ruinous. ALLEGED,—He could not answer *hoc ordine*, being cited *incidenter*. The Lords found, in such cases, where there was *periculum in mora*, and that the rent would perish, they ought to answer summarily, and not abide the course of the roll and the other *induciæ legales*.

*Vol. I. Page 605.*