

1694. *February 13.* AGNES GILHAGIE, and WALLACE, her Husband,
against WALKINSHAW.

THE Lords found these words, in James Anderson's oath, That he had ordered them to hold count for the same to George Anderson, his brother, which was contended to be a transmission of the right to George, did not import any more but to count with his brother, in respect he was unable to attend by sickness; and that it did not prove George was a partner. *Vol. I. Page 607.*

1694. *February 13.* ROB, Merchant in Glasgow, *against SMELLIE.*

THE Lords found the bond was drawn in the Scotch form, and that both were *correi debendi*, and principals: but, in regard it was alleged there was also an English bond for the same sum, and that, by the custom of England, he that is second named in a bond, is reputed only cautioner; therefore, before answer, they ordained him to depone anent the having of the said English bond. *Vol. I. Page 607.*

1694. *February 13.* MARION CARMICHAEL *against* ALEXANDER CHAN-
CELLOR.

THE Lords repelled the hail reasons of advocation; and found, seeing her husband had left her, she might pursue for the maills and duties of her own proper lands, without his concurrence: and remitted the cause back to the Sheriff. *Vol. I. Page 607.*

1693 and 1694. The DUKE and DUCHESS of HAMILTON *against* HAMILTON
of BANGOUR.

1693. *Feb. 7.*—THE Lords found Trotter the adjudger's instrument of offer of a year's annualrent of the sum, and a bond for the rest, to make up a year's rent, with the charter to be signed, bearing *salvo jure domini superioris*, was sufficient to stop and purge the non-entry, though caution was not offered; albeit it was only offered to the Duchess, and the Duke cited at the market-cross, he being then out of the kingdom.—See Stair, *9th February 1669, Black.* But, in regard the Duke's procurator then offered to pay the adjudger the principal sum, and that it did not appear whether he had a special mandate to that effect; therefore the reporter was to hear them, if the superior could redeem after the legal, as well as before, on the 36th Act of Parliament, 1469, allowing the over-lord, on the payment of the sum for which the creditor apprises, to take the lands to himself; which is called, by the lawyers, *regressus seu retractus feudalis, et redemptio dominica.* *Vol. I. Page 554.*

February 17.—Duke Hamilton's declarator of non-entry, against Hamilton of Bangour, mentioned 7th current, being again reported,—the Lords, as to the first particular, adhered to their former interlocutor, that the offer given to the Duchess, and charge to the Duke, at the pier and shore of Leith, (being then out of the kingdom,) was sufficient to stop the non-entry, though there was no offer nor consignment made when the Duke was charged to receive his vassal. but found, *quoad* the second point, that the bond offered for the year's rent was not valid, being not subscribed at the margins; and is now cancelled; and was a bankrupt: therefore they decerned in the non-entry; and did proceed no farther to examine the other objections made by the Duke against that offer.

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1694. *February 13.*—In Duke Hamilton's declarator of non-entry, against Hamilton of Bangour, mentioned 17th February 1693: in regard the pursuer's advocates would not insist, because the Duke was out of the kingdom; therefore the Lords declared the non-entry should not run against the defender, who was ready to debate *instanter*, till the Duke insisted; for it was hard, by the pursuer's tergiversing, that the defender should still be liable in the maills and duties, if the non-entry should be found: though it was alleged they had another remedy, by offering to enter by a charter, and a year's rent to the Duchess; and how long ordinary remedies were competent, we ought not to recur to extraordinary methods.

But the Lords considered they had offered already; and this new offer might weaken the former, even though done under protestation.

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1694. *February 13.* The MASTER of BALMERINO, and MR HUGH DALRYMPLE, Advocate, *against* SIR JOHN INGLIS of CRAMOND.

THE Master of Balmerino, and Mr Hugh Dalrymple, advocate, against Sir John Inglis of Cramond, in a reduction and improbation of his infetment on North Berwick. The *first* dilator was, That his authors were not called,—*viz.* Sir William Dick's heirs, &c. and the pursuers knowing them, it was a clear No process: yet the Lords allowed them to be cited *cum processu*, to the same diet to which the first term was taken.

2do. ALLEGED,—The pursuers' title was not libelled in the beginning, but only in the reason of reduction. The Lords found this informality not sufficient to cast the process; seeing they would be allowed to mend it.

The *third* material dilator was, That he called for the ground and warrant of their decret of poinding the ground, obtained before the Sheriff of Haddington in 1652; whereas it was contended, *1mo.* That the Sheriff and his clerk ought to be cited; *2do.* That, after so long a time, they were only bound to produce the decret itself, but not the libel and executions. And the Lords found so: for the Lords, after twenty or thirty years, will not burden creditors to produce the executions of apprisings, though they have them in their own custody; and much less executions of summonses, which are kept by others.

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