Carridden, the defender's father, in his oath taken on his death-bed, did acknowledge that Clackmannan bid him expede his infeftment speedily, lest he should be prevented. *2do.* That the onerous causes of his debt were not borrowed money, but contracts for victual and coals, and other such bargains, as he declares in his oath; and so he ought to produce these contracts, and the other grounds of his bond. The Lords resolved to begin first with that point, If he was obliged to instruct or adminiculate the grounds of his debt farther than by his father's oath. If he had declared it to have been borrowed money, it is like the Lords would have sought no farther astruction; but, he confessing it was made up of other transactions, the Lords thought it reasonable he should give some farther document and evidence of it. But the question arising, Whether it was referred to his oath by the creditors;—for, if it was *juratum deferente adversario*, they behoved to stand to his oath;—the Lords found it was taken *ex officio*, before answer, and for expiscation, he being then *moribundus*, and not on the act of litiscontestation; therefore the plurality found that Carridden behoved to astruct the onerous causes *aliunde* than by the narrative of the bond and his father's oath allenarly; not but they might contribute with others, but that they were not in this case, when the party was just breaking, sufficient instructions *per se*. *Vol. I. Page* 623.

July 13.—The Lords advised the further debate in the reduction pursued by the Creditors of Clackmanan against Alexander Miln of Carriden, mentioned 27th June 1694; wherein it was urged that he behoved to condescend on the onerous causes that constituted his debt; seeing he knew Clackmanan was then insolvent, and could not gratify or prefer one creditor before another, and that he had shunned to depone on some of the interrogatories. The Lords thought it hard precisely to tie creditors to astruct the narratives of the onerous cause of their bonds; but, in a suspicious case like this, they allowed both parties, before answer, to adduce what probation they could on the matters of fact,—the one for astructing the bond, and the other for evincing his participation of fraud or knowledge; and particularly to examine James Hay, the writer, in whose hands the first bond was depositate, and Andrew Crawfurd, who examined him on the commission, whether he had his qualified oath drawn up in writ before, and if he offered to answer any other interrogatories they pleased. *Vol. I. Page* 630.

1694. *July* 13. The Creditors of Baillie of Hardington *against* Bailie William Menzies.

Westshiels, and the other Creditors of Baillie of Hardington, against Bailie William Menzies, about the extinguishing a comprising by intromission. The Lords found, seeing there was another apprising led by one Brown, within year and day of Hardington's, in 1669, that, if Brown pleased to require it, the first appriser ought to account to him for a proportional part of the maills and duties, they coming in *pari passu:* but, if they intended to suffer the whole intromission to be ascribed to pay, satisfy, and extinguish the first comprising, they might do it; because the expiration of the legal was odious, and that cal-

cul is to be followed which hinders it from taking the benefit of the legal. And as to the comprising led in 1673, found it preferable, in so far as it was founded on the avail of the marriage, which is a *debitum fundi*, so as to affect the ward-lands, but no others, with the preference; but found the ward-duties had not that privilege; and therefore that part of the comprising led for them was not preferable, but behind the rest. *Vol. I. Page* 632.

1694. *July* 13. MARION WEIR and her HUSBAND *against* MICHAEL NASMITH.

THE Lords found the testificates and affidavits produced did not fully instruct that her brother was dead; but that they gave so much evidence as to continue her in the possession of the lands, upon her finding caution to refund the maills and duties, if afterwards it appear that her brother is yet alive.
Vol. I. Page 632.

1694. *July* 13. MARGARET HUNTER and HUSBAND *against* MARGARET HOGGAN, JOHN WARDEN, &c.

SHE, having got a disposition of some tenements from her first husband, with the burden of his debts, she thereon grants bonds of corroboration to some of his creditors. The said Margaret Hoggan, her husband's heir, raises a reduction of her disposition *ex capite lecti*, and obtains a decreet in absence. On this she intents a reduction of the bonds she had given in contemplation of that disposition, *ex causa datorum causa non secuta*. ANSWERED,—We disclaim any such decreet obtained against you. We never pursued such an action, nor gave any warrant to compear for us; and, if a decreet passed, it was your own fault that did not satisfy the production by giving in the disposition. But it is reduced for not-production, without either debate or probation that it was on death-bed; and so the collusion is manifest, that it has been of her own procuring, to give her a ground whereon to quarrel the bonds of corroboration she had given to her husband's creditors.

The Lords found the answer relevant to be proven by the oaths of the pursuers in that process of reduction, and the advocates, that they knew nothing of it, in respect it is without debate or probation; and, if she pleased, she could be yet reponed against that decreet, by production of her husband's disposition to her. *Vol. I. Page* 632.

1694. *July* 13. MR ROBERT HAY of DRONLAW *against* The EARL of STRATHMORE.

THE Lords were convinced that Dronlaw had ground to seek deduction *quoad* the one half of Lyel's comprising, seeing it was paid by the Lord Ramsay, his co-cautioner; but, in regard Dronlaw had referred the promise of payment of