

and refused to sign his deposition. But the Lords were straitened; because, if thir two decreets of repetition were taken off the file, then Haining's decreets would stand in force; whereas the Lords desired to lay all the decreets on both sides apart, that, being free, they might see where the material justice or iniquity lay: And, therefore, they superseded to give answer to the loosing of Elliots' decreets till the Ordinary should hear them condescend what nullities they were able to adduce for opening of Haining's decreets against them; for they alleged that, in the border-commission decret, he sat, though he had a gift of their fines. *Vol. I. Page 610.*

1695. *January 9.*—Crocerig reported Elliots against Riddel of Haining, mentioned 16th February 1694. The Lords superseded the consideration of the expense he had put the Elliots to, in obtaining two decreets of reduction of that bond or decret, fining them in 5000 merks, till the conclusion of the cause, that they may see where the material justice lies. *Vol. I. Page 656.*

[See the final part of the report of this Case, Dictionary, page 16838.]

---

1693, 1694, and 1695. ALISON AITKEN, and DUNCAN ROBERTSON, her Husband, *against* LILLIAS AITKEN, and PATRICK SMITH, her Husband.

1693. *February 1.*—THE Lords adhered to the last decret; but found, that, in the denuding of the right of the executry, Mr Duncan's wife might make her election, whether she would content herself with the 4000 merks contained in the bond of provision given her by the late Bishop of Galloway, her father; or if she would repudiate the provision, and betake herself to her legitim; in which last case, the Lords appointed the auditor to hear them, if she could recur to her legitim, and retain as much in her hands of the executry, till the decision, as the said portion natural would extend to. *Vol. I. Page 552.*

1694. *February 16.*—Arbruchel reported the case of Mr Duncan Robertson and his wife, against Lillias Atken, his goodsister, and Mr Patrick Smith, her husband, in which Mr Duncan gave in a declinator against the President, as he who might lose or gain by a transaction he had made with Mr Patrick, about some arrears of teinds he owed Atken, Bishop of Galloway.

The Lords, on the President's declaration that he had no ease nor composition in that bargain, rejected the declinator; and, in regard the decret was alleged to be null, as disconform to the minutes and signed interlocutors, they granted warrant to the reporter to call for them from the clerks, and compare with the decret. *Vol. I. Page 610.*

1695. *January 9.*—The Lords found a disconformity betwixt the decreets, as they were extracted, and the grounds and warrants thereof; and, therefore, opened both the first decret and the decret of suspension, and reponed Mr Duncan against them. It was urged by some of the Lords, that the extension of the decerniture was no more than what is usual in extracting of all decreets, that necessary consequences and conclusions, expressly libelled, are taken into the decerniture; and the decret being clearly warranted as to the first part, ordaining Mr Duncan to denude of the executry, and assign it, could not be opened *quoad that*, but only as to the second part, decerning him to make count

and reckoning, payment and deliverance; which could not take effect till the accounts were closed; and, therefore, they should go on in the said count and reckoning before Newbyth, the auditor. But the Lords thought the nullities sufficient to repone Mr Duncan to all his defences. *Vol. I. Page 656.*

---

1695. *January 9.* SIR ALEXANDER COCKBURN OF LANTON'S CREDITORS.

ON a bill given in by some of the creditors of Sir Alexander Cockburn of Lanton, against the manner of valuing that part of his estate he has in his own hand, and not set out in tenandry, by measuring it in acres: the Lords thought these creditors could not complain, because the commission was directed upon an act obtained at their own desire, and so they could not quarrel nor impugn it. Though the Lords thought it a very fallacious method, yet it would bring in the creditors-adjudgers to get a part; whereas, if the estate were sold at the rate of 24,000 merks *per annum*, for which it is now roup'd, they would be cut off by the preferable infest creditors. So, if the Lords make its rental high, conform to this probation, the event will be, none will bid for it at the roup, and the land will divide among the creditors effeiring to the rate put upon it, (which is far above what any tenant could pay,) and their respective sums: Therefore, the Lords adhered to the act and commission, in so far as concerned these creditors who procur'd it, as the posterior creditors did not quarrel it; seeing they had the advantage of getting something, and of being brought in almost *pari passu* by it. But if it were not for this charitable consideration, the sustaining such an extravagant valuation would seem very strange. *Vol. I. Page 657.*

---

1695. *January 10.* JAMES BUCHANAN *against* The INCORPORATION of MARY'S CHAPEL.

ARNISTON reported the bill of suspension, James Buchanan, wright in Edinburgh, against the incorporation of Mary's Chapel there, who had found he could not take a journeyman, who was come to age, and had fully learned his trade, to be an apprentice, thereby to give him his freedom: and the town-council ratified this act.

The Lords thought it belonged to the government and policy of the burgh to regulate their own trades; yet, in case any of them complained of oppression, they behoved to hear them; and, therefore, passed the bill of suspension, unless the chargers would discuss the reasons summarily on the bill.

*Vol. I. Page 657.*

---

1695. *January 10.* The LAIRD of COCKBURN, &c. *against* LORD SINCLAIR.

ON a petition given in by the Laird of Cockburn, and some of his creditors,