1695. *January* 11. BAILLIE of LAMINGTON and WILLIAM MENZIES *against* SIR WILLIAM DENHOLM of WESTSHEILS.

THE competition between Baillie of Lamington, and William Menzies, and Sir William Denholm of Westsheils, about the estate of Hardington, was reported. The *cardo quæstionis* here was, There being several titles of apprising in Hardington's person, to the extinction of which of them his possession and intromission was to be imputed? The Lords found, his first entry to the possession being by virtue of an apprising in 1669, that part of the lands he then possessed behoved only to be ascribed to that comprising, not only for the time he had no other title and right in his person, to which it could be attributed, but even after the second apprising, in 1673, was led by him; seeing, it was to be presumed he continued by that same title by which he began to possess, unless there had been some indication and declaration of his mind to alter it. Then, 2*do.* as to years after both the apprisings were in his person, they found his possession of other roums, besides these in the first possession, must be imputed equally to extinguish and satisfy all the comprisings in his person, aye till he was interpelled by the process at a co-creditor's instance in 1679. And, 3*tio.* after that interpellation, they found his intromission behoved to go to the extinction of the comprising 1673, as the *jus nobilius et potentius;* and that part of it which was led for the avail of the marriage being *debitum fundi*, and a preferable debt, and so being *sors durior* upon the debtor; though, even in that case, the debtor has not always the application, either of indefinite payments, or of promiscuous possession upon plurality of titles, without declaring to which of them he ascribes his intromission; as was found 13*th February* 1680, *Macreith* against *Campbell.* Many other points fell to be debated here;—1*mo.* If it was a privilege merely personal to the debtor, to apply in such dubious cases; and if a man, entering by a comprising containing more sums of several natures, if his possession could be ascribed to extinguish one of them *primo loco*, or if his *animus* must be considered to possess for the haill sums contained in it, as being a *jus indivisibile.*

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1695. *January* 11. Dean of Guild JAMES NICOLSON *against* JOHN DUNCAN, and JEAN WISHEART, Relict of Mr William Walker, Minister at Northberwick, his cedent.

THE case was, Mr William took a bond from Commissary Aikenhead, for 1400 merks, payable to himself, and the said Jean, in liferent. There being many annualrents of this sum owing, Mr William adjudges Commissary Aikenhead's lands for the said principal sum of 1400 merks, and for the haill bygone annualrents thereof, being about 800 merks more; and so the style of the adjudication was, That the lands are adjudged for that whole accumulated sum of 2200 merks to the said Mr William and his wife in conjunct-fee and liferent. Upon which she claimed the liferent of the haill accumulated sum.

ALLEGED,—Her husband had provided her only to the original sum of 1400

merks, in liferent; and, though the style of the adjudication bore the whole sum to them in liferent, yet that behoved to be understood *in sano sensu, et singula singulis;* seeing *non agebatur,* by adjudging, to augment or increase her jointure, but only to secure the money on the debtor's estate from perishing.

ANSWERED,—The very nature of the right bore her plainly to the liferent of the whole; and it was equivalent to an assignation from the husband, and needed no farther declaration of his intention.

The Lords found it could not be the husband's meaning to give her any more liferent, but precisely of the primary sum of 1400 merks, and not of the subsequent annualrents accumulated in the adjudication. *Vol. I. Page* 658.

1695. *January* 16. ANNE CARNEGIE *against* JOHN RAMSAY, Merchant in Perth.

THE Lords had found, that, by the conception of the testament, she had right to her 600 merks of jointure, and to her 3000 merks of tocher. But, since that time, a codicil, subsequent to the testament, being produced, it was contended he had thereby altered the same, and restricted her, in case of her daughter's decease, to the 3000 merks; because, in that event, it bore she should fall from her jointure. But the words, "from her," being in the margin, and unsubscribed, the Lords rejected this codicil, and adhered to their first interlocutor. *Vol. I. Page* 659.

1687, 1693, *and* 1695. The DUKE of HAMILTON *against* MR JOHN ELIES of ELIESTON.

[See the previous parts of the Report of this Case, Dictionary, p. 9293.]

1687. *July* 28 *and* 29.—The Duke of Hamilton against Mr John Elies of Elieston and Sir James Hamilton of Maner-Elieston. This is a reduction which they had raised of the Duke's declarator of non-entry, mentioned 12th March 1684. And they craved to be reponed against that decreet, as pronounced in vacance by three Lords, having a delegation from the rest, without reporting to the whole body. ANSWERED,—The decreet was pronounced in session, and the seeing it extracted was only remitted to these three Lords, who ordered it in vacance.

2do. That the Duke's letter was not considered. The Duke opponed the decreet.

For Squire Hamilton, it was ALLEGED, The decreet was in absence *quoad* him; for, though there was a bill given in in his name, that was only done by Mr John Elies, and he denied that he was present at Robert Hamilton's deponing. And the execution against him, (being then in Ireland,) does not bear that a copy was left at the market-cross of Edinburgh, and it was not stamped, and so was null. And if he, as apparent heir, was not called, then the whole decreet fell; as was found in the Duke's case with the Lady Callander, 16th July current.