

1695. *February 12.* BAILIE JOHN CHANCELLOR *against* WALTER CORNWAL OF BONHARD.

CROCERIG reported Bailie John Chancellor against Walter Cornwall of Bonhard, for payment of 6000 merks, contained in a decret obtained by him against his father, wherein he had arrested that sum in his hands, as debtor therein to Sir George Drummond; and a day being taken to produce him, he was holden as confessed, and the term circumduced against him. ALLEGED,—All the ground you had to lay on that arrestment was, Because he was standing debtor in Provost Drummond's book; and offered to prove, by his oath, that was the cause of it; and, that being acknowledged, then offered to prove, he was only stated debtor there in £9 Scots, for a candebeck-hat.

The Lords being unwilling to loose decreets, where parties were dead, and so the mean of probation was perished, yet that it might not be *vinculum iniquitatis*, they, in this case, ordained Bailie Chancellor, *ex officio*, to depone upon what ground of suspicion he arrested that sum in Bonhard's hands, as due to Provost Drummond, and the count-books to be produced, and any other documents and evidences, to instruct Bonhard was debtor to him *aliunde* than by the count-book.

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1695. *February 12.* SOMERVILLE OF KENOX *against* MENZIES OF RAW.

HALTON reported Somerville of Kenox against Menzies of Raw. The Lords found the bond, being before the Act of Parliament 1681, the want of the designation of the writer and witnesses may be yet supplied by condescending thereon; but that some adminicles, *comparatione literarum*, or otherwise, behoved to be adduced for astructing thereof. Some thought it ought not to be sustained; but, if they condescend upon any yet alive, that they may be examined thereanent. See *2d February 1665, Falconer*; *22d February 1676, Innes*; and *6th December 1665, Cunningham*.

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1694 and 1695. HOME OF LINTHILL *against* HOME OF WEDDERBURN.

1694. *January 24.*—ARBRUCHEL reported Home of Linthill against Home of Wedderburn. It was a recourse upon the absolute warrandice in a disposition of six chalder of teinds, in regard £145 of them was evicted by Mr Beton, minister of Ayton, by a decret of augmentation of his stipend. ALLEGED,—That warrandice of teinds could never extend to warrant against ministers; because they stood naturally affected with stipends, and all knew their hazard. Some Lords thought, if they were bought at nine years' purchase, (which is the rate of teinds settled by the Act 1633,) then, in regard of the ease in the price, it was

evident he had taken his hazard of all the burdens that afterwards might befall them ; but, if he paid a full and adequate price of sixteen or seventeen years' purchase, as lands fell, then he should have regress. But the plurality (abstracting from this inspection,) found, where warrandice was given for teinds, That, in case of supervenient laws, or augmentations to ministers, there could be no recourse, but only if they be evicted by a fact and deed of the disponent, or *ob defectum tituli*. See Craig *de Warrantizatione* ; and Dury, 27th March 1634, *Lady Dumfermlin* ; and 28th July 1635, *Lady Cardrose* ; and 10th July 1676, *Auchentoul*. So the only remedy against these notour burdens is to insert them *nominatim* in the warrandice, and provide specially against them *in omnem eventum*.
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1695. *February 12.*—Arbruchell reported William Home of Linthill against the Laird of Wedderburn and Beton of Blebo, mentioned 24th January 1694. The Lords had found, That a part of the teinds disponent being evicted by an augmentation of £161 yearly, given to the minister of Ayton, there could be no recourse upon this distress ; teind being naturally liable to ministers' stipend, and not liable for warrandice, save either in an express contravention by some fact or deed, or else *super defectu tituli*. Yet the Lords found, in this case, he might recur on his warrandice ; because it was not formally a disposition of teinds, but a pension of six chalders of victual out of these teinds. *2do.* He had paid as much for them as if they had been stock ; and, if they would retrocess him to the apprising he had disponent, he was content to quit his right to these teinds. *3tio.* He had provided himself with real warrandice ; and *quorsum* took he that but to secure himself in all events ?
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1695. *February 13.* The DAUGHTERS OF IRVINE of LENTUSH against IRVINE of DRUM.

PHEEDO reported the Daughters of Irvine of Lentush against Irvine of Drum. The Lords thought it very informal to libel an exhibition *ad deliberandum*, as apparent heirs, and yet to insert a conclusion for their 8000 merks of provision, that he might be decerned to pay it ; as also, that they could not insist for their portion, as heirs-female, of the marriage *designativè*, till they were first cognosed, though it needed no service. But the Lords found they were only personal creditors to their father, and his heirs of tailyie, on their mother's contract of marriage ; and so had no interest till they established a title, by adjudication in their person, on Drum's renunciation to be heir ; which he offered ; and then they might compete. At which time it would be proper to determine whether his qualified fee could empower him to grant so great a jointure, and so large provisions to his wife and bairns, out of so small an estate ; and how far Drum may be reached for granting a second right of the lands *in quantum lucratus* ; and if the irritancies only restrained Lentush from gratuitous arbitrary deeds, and not from rational and onerous ones.
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