merchant ware, abuilziements furnished to himself.—It was *alleged* for the defender, That he could not be liable for any of these bonds, because he did not represent his brother Robert, and could not be made liable upon any of the passive titles, being served heir to his father, Mr James Scot, who had died vested and seised in the lands and estate of Bonnington; and for that conclusion, that it be declared that the estate might be comprised or adjudged for the first bond of 1200 merks granted by William, it could be nowise sustained; because that bond was innovated and extinct by the new bond granted by Robert, who had never any right to the lands by infeftment or disposition; and as to the bond of L. 400 granted by Robert himself, the defender could nowise be liable, not representing him by any of the passive titles.—It was *replied* as to the first bond of 1200 merks, it not being extinguished, but only retired by granting a new bond, wherein the annualrents were accumulated with the principal sum, the creditor had still a good right to comprise or adjudge any right that stood in William's person, who was the first debtor; and for the second, Robert being apparent heir to William, who had a disposition of the lands, the pursuer's husband was *in bona fide* to contract with him, and furnish him necessaries upon his bond, whereof he ought not to be prejudged, because he died before he was served heir or infeft.——The Lords did find, That it being proved that the bond of 1200 merks granted to Robert was only retired, and never satisfied otherwise, it ought not to be reputed as an extinguished debt, or as innovated, that being of a dangerous consequence; seeing it is the ordinary custom of creditors to take bonds from apparent heirs without considering whether they are infeft or not; and if it were otherwise sustained, to be an innovation to extinguish the debt, then, if the apparent heir should immediately die, they would be altogether secluded from comprising or adjudging any rights standing in the person of the first debtor, which were against all law and reason. As for the second bond granted by Robert only, who had never any right to the lands, the Lords thought, that unless the defender Gilbert could be made to represent him, he could not be personally liable for his debt, and no declarator of apprising or adjudging could be sustained, but of such a real right as stood in the person of Robert; and could not be extended to any disposition or right that stood in the person of William, who was never debtor for that sum.

Gosford, MS. No 745. p. 458.

No 2.

1678. *November* 28. Gordon of Carnburrow *against* Gordon of Edinglassie.

No 3.

The Lords found, where a creditor takes a wadset after a comprising, (though only in corroboration) yet it is in satisfaction, and restricts to these wadset lands; and the only difference is, he may recur to the comprising if his wadset be reduced, and the comprising may expire *quoad* the wadset lands.

Fol. Dic. v. 1. p. 477. Fountainhall, MS.