

alteration of the libel, and when it was ; if, after litiscontestation, or after sentence, and upon any other pertinent interrogatories to be given in by either party. *Vide* 6th March 1685. *Vol. I. Page 343.*

*March 6.*—The case of the Parson of Banchorie against Elsie, mentioned 24th February 1685, was advised. The Lords found, by the deposition of Alexander Deuchar, That the summons and act have been altered, vitiated, and interlined ; and the words, “ Muir and Moss” added : and therefore they loosed Elsie’s decreet, and appointed Boyne, Kemnay, and Carse, to visit the ground, and to take all cognition they think fit, by witnesses, &c. anent the property or commony therein, and to report betwixt and the 1st of November ; and, in the mean time, to endeavour to settle the parties. Mr James Gordon, on a bill, got Drumcairn added. *Vol. I. Page 350.*

1685. JOHN GRAY of CRIGIE *against* The EARL of LAUDERDALE.

*February 21.*—GRAY of Crigie gives in a bill against the Earl of Lauderdale, craving, in regard he would not produce the disposition called for, but suffered certification to pass against it ; that therefore the Lords would examine his witnesses on Lauderdale’s deeds of concussion and oppression, in dispossessing the Lord Gray, his author, out of Benby, and other lands, without a right, to lie *in retentis, ad futuram rei memoriam.*

The Lords ordained them to be received, he condescending on them.

Then Crigie gave in a new bill, craving liberty to add extrinsic grounds of Lauderdale’s concussing others, as he had done against my Lord Aberdeen ; *et quod quisque juris in alium statuerit, æquum est ut ipse eodem utatur.* *Vide* 6th March 1685. *Vol. I. Page 343.*

*March 6.*—John Gray of Crigie’s reduction against Lord Lauderdale, on concussion, mentioned 24th February 1685, is reported by the Register ; and the Lords gave just the like interlocutor here as they gave in Lord Lauderdale’s reduction against Aberdeen, allowing a conjunct probation : Crigie, to prove the dispossessing him, and keeping up his papers till he ended ; and Lauderdale, to prove that he entered by virtue of a right, and gave an adequate price. *Vol. I. Page 350.*

1684 and 1685. THE ADMINISTRATORS of HERIOT’S HOSPITAL *against* SINCLAIR and STEVENSON.

1684. *February 5.*—THE Magistrates and Ministers of Edinburgh, as administrators of Heriot’s Hospital, pursue a reduction of a tack set by them, in 1678, to Sinclair and Stevenson, of the Canon-mills, as done by private contrivance, and to the lesion of the Hospital ; (who enjoy the privilege of minors ; ) it being set for 2300 merks for nineteen years, whereas 1000 merks more yearly was offered ; and it was set in sundry particulars contrary to the statutes of that Hospital : and though it was answered, that the tacksman was

not bound to know these private statutes, yet *scire tenetur conditionem ejus cum quo contrahit*; and Heriot, a donor, might annex what qualities and conditions to his gift he pleased.

The Lords, on Castlehill's report, before answer, ordained the foundation and erection, or mortification, of Heriot's Hospital, with their statutes, to be produced.

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1685. *March 10.*—The reduction, mentioned 5th February 1684, pursued by the administrators of Heriot's Hospital, against Stevenson and Sinclair, of a tack of the Canon-mills, for 19 years, because of the enorm lesion, &c. being reported by Castlehill; the Lords, before answer, ordained probation to be led, what thir mills actually paid before the setting of this tack; for they considered there was some pique in this cause against the former Magistrates; and that it was not a good rule in locations, what they might have paid, or what they would give now; as also to try the custom anent appending the Hospital's seal to all their deeds, if it be essential or necessary.

The words were:—The Lords, before answer, ordain trial to be taken anent the method, which has been used in setting of tacks of thir mills belonging to Heriot's Hospital, if the samen was done by a public roup, or by intimation, and after warning of all the administrators of the Hospital; and what has been the custom of appending the seals to tacks of the mills or lands belonging to the said Hospital; and if the same has been in desuetude since making of the statutes; and also what rent has been paid for thir mills before the year 1666; and if the same was greater than the tack-duty now paid by the defender; and how long that rent was paid.

And, on the 20th of March, the Lords, on a bill given in by the Town of Edinburgh, allowed them farther to prove, before answer, that, before the setting this tack, responsal persons offered more tack-duty. *2do*, If it was set at the time of the old treasurer of that Hospital his going out, and the coming in of a new one. *3tio*, If the treasurer used to subscribe their tacks.

Then, on a bill given in by the defender, the Lords allowed her also farther to prove,—*1mo*, That, in 1666, the then tacksman's undertaking to pay 500 merks more than she now pays, helped to break him. *2do*, That the importation of malt from Musleburgh was then discharged, and afterwards allowed to the Duke of Lauderdale; which makes thir mills less worth.

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1685. *March 10.* ARCHIBALD GRAHAM, BISHOP of the ISLES, *against* JOHN CHARTERS and GEORGE WEDDERBURN, &c.

MR Archibald Graham, Bishop of the Isles, having charged John Charteris, George Wedderburn, and other merchants of Edinburgh, for £4 Scots, as the price of the teind for each last of herring taken in the seas adjacent to his diocese; they suspended on this ground,—That he has never been in possession of any such teind-duty from them, who are not the slayers and first takers, but only the buyers at the second or third hand; and that all thir *decimæ minores seu vicariæ sunt locales et consuetudinariæ, et tantum in iis est præscriptum quan-*