

this was, that one procurator proponed promiscuously a defence for all the defenders, though all of them did not know of the disclamation, but only some :) and therefore the Lords ordained John Callander to depone upon the verity of the haill articles of his account; reserving to themselves to modify the charges expended by him, as they see cause, because he carried on several other causes of his own under the pretence of this. *Vol. I. Page 498.*

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1688. *February 22.* WALTER GIBSON *against* CRAWFURD of CARSBURN.

WALTER Gibson, Provost of Glasgow, his charge against Crawford of Carsburn, on an Admiral-decree, was reported by Collington. The Lords ordained merchants to give their opinion, whether, if a ship be sold where the buyer undertakes the burden of the outreik, if masts will fall under the notion of outreik, seeing she could not be a complete ship without masts. *Vide l. 44 D. de Evict.*; Molloy, *de Jure Maritimo*, p. 194; and Loccenius, *lib. 1, c. 2. 2do*, To give their advice and report what is the custom of the Carribbee islands, of giving gratifications to the governors, that their ships may be declared free; and if the ship bears all or only a third part of it; for which Molloy was cited, *lib. 2, cap. 6.* And found no annualrent due for the outreik, and that they were not such *impensæ in navem* as bore annualrent, as victuals, provisions, and bottomry do. *Vol. I. Page 499.*

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1688. *February 28.* LADY CARLOURY *against* Her HUSBAND'S CREDITORS.

THE young Lady Carloury having given in a bill for an aliment to herself and children out of her husband's estate;—the Lords gave her £50 sterling. Which was thought very hard, where the estate will not pay the creditors' annualrents. *Vol. I. Page 500.*

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1688. *February 28.* SIR ROBERT PRESTON'S CHILDREN *against* His CREDITORS.

THE Children of Sir Robert Preston of that ilk, upon a bill, got a modification, from their father's creditors, of 600 merks for this year, during the dependence of their count and reckoning. *Vol. I. Page 500.*

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1688. *February 28.* JAMES KER *against* JOHN GIBSON.

JAMES Ker gave in a bill against John Gibson, his wife's father, showing he

had a process depending against him, on her mother's contract-matrimonial, for her portion; and therefore craved an aliment *medio tempore*.

The Lords refused it *hoc loco*, because she had married without her father's consent; reserving their action as accords. *Vol. I. Page 500.*

1688. *February 28.* CROMARTY'S CREDITORS *against* JOSEPH BRODIE'S RELICT.

THE Creditors of Cromarty objected against the comprising produced by the relict of Joseph Brodie, that it was retired by Cromarty the debtor, with a blank assignation, and he filled up Joseph's name in it, and took a back bond from him, declaring he had got it for security of some money Cromarty was owing to Joseph, and for any other sums he should advance for him; which did extinguish it by coming into the common debtor's hands; and being paid with his money, so that it could not subsist for personal sums and debts for which it was not led.

Yet the Lords found it might be so transmitted. But afterwards, thinking this somewhat irregular, they preferred her, on this ground, That the back-bond did not prove that the comprising was retired by Cromarty.

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1687 and 1688. CRAIGIE of GAIRSEY *against* WILLIAM MOODIE of MELSETER.

See the prior parts of the Report of this case, Dictionary, pages 6694 and 4419.

1687. *February 16.*—GAIRSEY against Melseter, mentioned 9th December 1685. The Lords, on Redford's report, examined the testimonies of the witnesses, and appointed the price at which they shall count for the Orkney meal, or chalder of bear, on the malt pundler of Kirkwall, to be L.50 Scots, as the current rate proven *communibus annis*; though Melseter's witnesses deponed on 70, 80, and 90, and Gairsey on 30 and 40; and so the Lords *mediam viam secuti sunt*. *Vide 20th July 1687.* *Vol. I. Page 448.*

1687. *July 20.*—In the debate between Craigie of Gairsey, and William Moodie of Melseter, mentioned 16th Feb. 1687, whether Melseter ought to have deduction of 2 *per cent.*, seeing the wadset was constituted in 1639, when the annualrent was at 8 *per cent.*, and now, since 1649, it is 6 *per cent.*:—ALLEGED,—He ought not; because, being a victual back-tack duty, the price of it is uncertain, and may sometimes fall to be within his annualrents. See Act 251, Parl. 1597, anent victual-contracts.

The Lords, on bill and answers, and Redford's report, refused to allow Melseter deduction of a fourth part of the victual back-tack duty, upon account that the annualrents were cried down from 8 to 6: but ordain the parties to