

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.

*Vol. I. Page 500.*

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

count for the victual contained in the contract of wadset, at the price of L.50 *per* chalder, since the date of the said contract; and appoint Gairsey to have his annualrent, as it was established by law, during all those years, and only to have 6 *per cent.* since the down-crying of the annualrents.

Melseter, in a new bill, objected a probation led by Mr Archibald Nisbet against Buchanan of Sound, of his victual also lying in Orkney, which the Lords modified to L.72 *per* chalder; and he craved the same price. Yet the Lords adhered, notwithstanding this bill; for that probation was against a minor, who was absent; and much of it was malt and not bear; and it is presently under reduction. *Vide* 9th Feb. 1688. *Vol. I. Page 467.*

1688. *February* 9.—In Craigie of Gairsey's case against William Moodie of Melseter, mentioned 20th July 1687: who tergiversing in the count and reckoning, and refusing to produce the discharges he had; Gairsey gave in a bill, representing it was done in order to be a ground of suspension, and to reduce his diligence of adjudication, on account that part of the sums were paid.

The Lords declared, if Gairsey should deduce any real diligence on the decret, that Melseter's afterwards proving partial payments should not reduce it; but only restrict it *pro tanto*. But did not declare, if it was suspended, and the decret turned into a libel, that the cautioner in the suspension should still remain liable, and that he should refund all his expenses; as Craigie sought by that bill. *Vide* 28th February 1688. *Vol. I. Page 496.*

1688. *February* 28.—Melseter, on a bill, stops Gairsey's decret, obtained 7th February last, on this pretence, that there could be no declarator of the irritancy of the back-tack till the event of the count and reckoning. But the Lords ordained Gairsey (in regard he, being Steward of Orkney, could not come back in June,) to depone what discharges or countbooks he had, and to produce them. *Vol. I. Page 501.*

1688. *June* 1.

SOME thought the Lords should have scrupled to sit, because of the proclamation dissolving the judicatories of the Session, &c. But the Lords, justly, would not draw in question their own right. *Vol. I. Page 505.*

1685 and 1688. WILLIAM SETON *against* SIR EVAN CAMERON OF LOCHIEL.

1685. *January* 10.—WILLIAM Seton, one of the King's Guard, gives in a bill to the Lords of Session, as commissioners of Argyle's forfeiture, against Sir Evan Cameron of Lochiell; bearing that, where Sir Evan being creditor to Argyle in 5000 merks, he had discovered to them that he was likewise debtor to the said late Earl in a greater sum than that 5000 merks; and, as a reward of