ton is not excepted in these acts, but only in the thirteenth act, anent regalities of erections; therefore they found, that Sir John Nicolson's taking the lands holden of the King in 1669 for payment only of a merk of feu-duty, could not prejudge Heriot's hospital of the old feu-duty of 12 merks yearly; and that Sir William Scott of Clerkinton's infeftment in 1634, bearing that duty, was not a mistake, but conform to the fourteenth act 1633; though Heriot's hospital's right was from the Earl of Roxburgh and the Baron of Brughton, who had disponed the superiority before; only the Lords found it re-annexed again by the Parliament 1633. *Vol. I. page* 554.

1693. *February* 3. SIR JOHN GORDON of Park *against* SIR PATRICK OGILVY of Boyne.

THE Lords would not directly sustain that defence against the contract of agreement, that he was so supinely drunk, when he subscribed it, that he had not the use of his senses or reason; but, before answer, allowed either party a mutual probation, in what condition he was at the time of his signing. For knowledge and consent, as acts of the judgment and will, are both requisite when one contracts; and if these be obfuscate and wholly asleep, it is as unjust to tie him then as if he were mad or an infant. Yet this bears a reflection on the one party, that he filled him drunk to take advantage of him; and on the other, that he should have given way to his own intoxication. *Vol. I. page* 554.

1693. *February* 3. WYLIE *against* SCOTT.

WYLIE and Scott, about the wadset money on a booth. The Lords found the deceased Thomas Wylie's requisition did not make the sum moveable, so as to alter the destination and appointment of that sum which he had made to one of his sons, so as to bring in the executors with him. *Vol. I. page* 554.

1693. *February* 7. JOHN ANDERSON *against* HEW CORBET of Hardgray.

THE Lords thought the executor's confirming *per errorem* heritable sums, could not make his cautioner liable to account for them; albeit it may be presumed that he did it on his private knowledge that they were rendered moveable by a requisition or charge, which now might be abstracted. But in regard that the cautioner alleged the principal executor had now suspended Anderson the creditor's decreet, therefore, he could not be distressed till the principal executor and that suspension were discussed. And though this was a dilator, after a peremptor, yet being emergent, *et noviter veniens ad notitiam*, the Lords admitted it to stop sentence till the said suspension was discussed; and allowed the suspender to be cited *incidenter* for that effect. *Vol. I. page* 554.