

they are yet resting owing unpaid ; and such as had right by assignations, farther to depone what eases and compositions they got down. *Vol. I. page 556.*

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1693. *February 9.* MR. DAVID WILLIAMSON and MR. JOHN ANDERSON, ministers at St. Cuthberts, *against* MR. JAMES LOWS of Mercheston.

THE Lords repelled the first reason of suspension, that he was not legal minister, not having the call of the major part of the heritors, though he had the last incumbent's demission : for the Lords thought that cognition belonged to a church judicatory. And as for the *2d*, that he was unequally stented, and that his quota could not be so many bolls by far, when calculated with the rest of the heritors of the parish, in regard the locality was laid on by the King and Lords of the Treasury, and ratified by a decret of the Commission for 'plantation of kirks ; they remitted him for his redress to that judicator by reduction, the Lords not being competent Judges of their sentences. As for the *3d*, they also repelled it, *viz.* that they were always in use to pay only the middle fiars for their teinds, when they belonged to the bishop, and had an ease from the King when they fell to him by abolition of Episcopacy, and that past memory ; and therefore they ought still only to pay him the middle fiar ; for the Lords considered that it was *actus meræ facultatis*, and did not tie the ministers who had not such large revenues as the bishops had, and that the decret expressly bore either delivery of the bolls, or one hundred pound for each chalder thereof. *Vol. I. page 556.*

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1692 and 1693. JOHN CARSTAIRS of Kinneuchar *against* SIR JOHN RAMSAY of Whitehill.

1692. *Dec. 22.*—THE Lords sustained Kilconquhair's declarator, and found it not *jus tertii* to him to propone ; but that it was all one as if he should allege that Sir John's comprising was satisfied, paid and extinct within the years of the legal, by intromission with the means of the common debtor, which is certainly relevant ; and that he might allege it, though he transacted with Sir John Ramsay, and acquired his said comprising, and had given him security for 38,000 merks for the same ; seeing, when he comes to defend himself by that comprising, against other posterior creditors, they may say it is extinct by satisfaction in the person of Sir John Ramsay, your author, before he was denuded in your favours. Some of the Lords were against declaring presently, but to reserve it as a ground of recourse of warrandice against Sir John, in case Kinneuchar should afterwards be distressed, or that comprising quarrelled upon that ground.

*Vol. I. page 536.*

1693. *February 9.*—The Lords found that even Carstairs had interest to propone this allegiance, that you are paid by intromission with rents of houses belonging to the common debtor ; and that, when I came to use the adjudications

you have disposed to me, the creditors will object extinction by your's, my author's, intromission foresaid. Yet sundry of the Lords thought this was no ground to cause Sir John presently count and reckon with him, to deduce off Kilconquhar's bond of 38,000 merks, but was only a ground whereon he should be obliged to warrant him in case of distress. But the Lords adhered to their interlocutor of the 22d December last.

*Vol. I. page 557.*

1692 and 1693. JOHN SCOTT of Sinton *against* JOHN GRIEVE of Pinackle.

1692. *Nov. 18.*—THE Lords repelled the first reason of reduction of the Sheriff's decret, that he had declined him, in regard he dwelt not within the jurisdiction; not so much on account of the first answer, that although he dwelt *extra territorium*, yet the land in question lay within the shire; nor of the second answer, that he had passed from his declinator by compearing, proponing defences, and deponing; for it was thought if any wrong was done, his compearing did not so homologate but the decret might be turned into a libel. But it was repelled in respect of this third answer, that he was cited by the Lords' letters of supplement, which were ordained to be produced; though some alleged supplements can only be for citing parties for their interest, but not principal defenders. As to the second reason of reduction, viz. That the third part, possessed by him, was after mensuration of the whole; and though the marches were set in his own assertion, and so *ubi mensor falsum modum dixerit*, it should be rectified; yet that it had been so divided three years before; relevant to assoilyie him from all bygones of the excess of one hundred pound Scots, which his third part was proven to be better worth than any of the other two parts, as a *bona fide possessor*; he proving it was, conform to that division, made three years before his tack; and that he made offer of any of the parts Swinton the heritor pleased to choose.

*Vol. I. page 519.*

1693. *February 9.*—The Lords thought there was unfair dealing in Grieve's measuring the land, and that *mensor tenetur de dolo si falsum modum dixerit*; yet, in regard of the former interlocutor, 18th November, 1692, they assoilyied him from the excrescent duty preceding the citation, as *fructus bona fide consumpti*.

*Vol. I. page 557.*

1693. *January 12, and February 9.* SIR THOMAS KENNEDY, *against* BANNATYNE, BONNAR'S Heir.

*Jan. 12.*—THE Lords having advised the case between Sir Thomas Kennedy and Bannatyne, Bonnar's heir; they adhered to the decret *in foro*, and only sustained this process in so far as *utiliter gestum et in rem versum* to Bonnar's heirs; and ordained him to give in a condescence on Cornelius Neilson's expenses, he had wared out *qua factor*, for the heirs; and in so far only as they were profitable,