age of these bursers; because Mr John Bayn, by a paper, left the nomination of those who should be patrons to Sir John Nisbet of Dirleton and Sir William Bruce; and they most partially filled up their own names therein; which could not be the defunct's meaning, else he would have named them: likeas it was on death-bed, and filled up after his decease. There was a former interlocutor sustaining their taking the patronage to themselves; but the Lords were desired to reconsider and review it. *Vol. I. Page 595.*

1693 *and* 1694. HARPER *against* YOUNG.

1693. *December* 28.—SIR William Hamilton, Lord Whitelaw, as probationer, reported the debate between Harper and Young. A creditor, adjudging a wife's right on a tenement of land; the debtor compearing, seeks to stop the adjudication, by offering to produce a progress, and to put him in possession, and restrict him to a part of the lands, and produced her liferent seasine.

ANSWERED,—The Act of Parliament 1672 relates only to adjudications of the property of lands, where it allows to restrict the creditor to a proportion, but cannot take place if the right craved to be adjudged is only a liferent, for then I must have the whole; because, if the liferenter die, the adjudication, in so far as it was unpaid during the liferenter's lifetime, perishes, and ceases with it, and he may lose his money. The President moved, that it might be restricted, if, upon a valuation of the liferent, at four or five years' purchase, that price would extend to more than the creditor's debt, for which he craved adjudication; but it was considered she would not be forced to sell it; therefore, the Lords found, she behoved either to find caution to pay what should be resting of the sum in the adjudication at the time of her death, or else they would not restrict, but let the adjudication go for the haill liferent.

It was also further ALLEGED in this process, That she had a separate right of fee, besides the liferent; in which case, if proven, the progress of the liferent seasine produced was not sufficient to restrict the adjudication.

Vol. I. Page 585.

1694. *January* 20.—The case was,—If a creditor, adjudging from his debtor an adjudication which the debtor has on a third party's lands, could be restricted to a part of it;—or if his adjudication behoved to be of the whole adjudication sought to be adjudged, being *in cursu*, and the legal not expired. Some thought, if the sum in the first adjudication was much greater than the sum for which it was craved to be adjudged, then they might offer a progress and a part. Yet, the Lords considering the inconveniences that might follow, and that this was not a clear right, as the Act of Parliament 1672 requires, but a back-bond,—therefore they granted a total adjudication, and would not restrict to a part. *Vol. I. Page 595.*

1694. *January* 23. CARNEGY *against* CARNEGY of KINFAWNS.

HALCRAIG reported Carnegy against Kinfawns, his elder brother. The

Lords found he had an interest to seek inspection of his father's rights, and that summarily, without a new process; and that the inventory should be made forthcoming to his tutors, that they might pitch on what writs they desired a sight of. *Vol. I. Page* 596.

1694. *January* 23. The Town of Edinburgh and Captain Wood *against* George Davidson, &c. Brewers in Leith.

The Town of Edinburgh, and Captain Wood, their tacksman of the imposition of the two pennies on the pint of ale, against George Davidson, and the other brewers in the Yard-heads of Leith. The Lords found they were bound to depone anent the quantities of ale they vented within the Town's liberties; but where the Leith tapsters had already deponed, that *quoad* these they should not depone again; and that they may depone in thir terms, that their bygone brewings exceeded not such a quantity, conform to the clause in the act of Privy Council, seeing they could not be positive for bygones: And found, the setting waiters at the ports, or giving them billets, did not so liberate them but that the Town's tacksman might also put them to their oaths.

Vol. I. Page 596.

1694. *January* 23. David Allan *against* Doctor Gordon and Straiton.

The generality of the Lords thought, that, if the competition had been only betwixt the children of the first and the second marriage, the provision of the tenement to the heirs of the first marriage in the contract would have preferred that heir; yet not so, but the father, being still fiar, might give a rational and moderate provision out of it to a second wife, or her children, in a second contract. But here it came to be the case of a singular successor, who had *bona fide* acquired right from the heir of the second marriage; and the heir of the first marriage had renounced, but was not served heir.

The Lords preferred Allan, who was the singular successor, deriving right from the heir of the second marriage: though some alleged that he was *in mala fide* to purchase; seeing, by the contract of marriage, he saw the tenement provided to the heir of the first marriage; and his *ignorantia juris* could not excuse him. Some minded the Lords of the famous case of the three sisters, recorded by Craig, *tit. De Successione Fœmin.* where the Lords divided the tenement amongst the three daughters of three several marriages, to each of whom the father had provided it in their mother's contract-matrimonial; and the like was moved here, that the tenement might be divided between the heirs of the two marriages. But it was decided *ut supra.* *Vol. I. Page* 596.

1694. *January* 24. James Thomson and Andrew Peter *against* Morgan.

The Lords found the warrandice of his tack not incurred; seeing any debar-