

1694. *February 20.* SIR JOHN FOULIS of RAVELSTON, and WALTER SETON, *against* CORNWAL of BONHARD.

THE Lords thought, that an appriser or adjudger, entering to the possession, were accountable for the rent of the roums they intromitted with, unless they were debarred. But here, Bonhard's entry being on a decreet of maills and duties, on a voluntary right, they found that did not oblige him to diligence, but only to count for actual intromissions. But, as to the casual rent of the coal and salt, they found he ought to count for the preceding rental, or that he exposed it to roup, or that he could prove that Sir Walter debarred him, *vel via facti vel juris*, by suspensions or the like. *Vol. I. Page 611.*

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1694. *February 20.* The TOWN of EDINBURGH *against* CAPTAIN JOHN GAIRDEN.

THE Lords repelled his reason of suspension, founded on his bond, That it was alternative ; either to present his person to prison, or to pay the sum ; and that he elected the first. The Lords found that he had elected the last, by making some partial payments ; so that he could not recur now. And, as to the second, craving production of the tack to which this bond was relative, the Lords refused it, seeing he ought to have his own copy of the tack ; but ordained the Town to assign him against the conjunct tacksmen, that he might procure his relief *pro rata.* *Vol. I. Page 611.*

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1694. *February 20.* BAILIE of JERVISWOOD *against* RUNSIMAN.

WHEN the Duke of Gordon was donatar of his forfeiture, John Trotter, his factor, draws a precept on Jerviswood's tenants in Mellarstanes, to pay their rent to this Runsiman ; who gave him, instead of money, their bond as borrowed money. Jerviswood pursues them to pay him, as they who have their rents yet in their hands.

RUNSIMAN ALLEGED, The debt was innovated by their granting bond ; and it was no more to be reputed as rent, but as if, *fictione brevis manus*, the money had been paid down to Runsiman, and he had given it back again on new security ; and it was not equivalent, as if it were in the donatar or his factor's hands. The PURSUER CONTENTED, that it was truly their rents, and in their hands unpaid, and they had no discharge.

The Lords, before answer, ordained the factor's precept to be produced, that it might appear whether it imported a discharge ; and the assignee to depone if he knew that it was for their rent. *Vol. I. Page 611.*