of these lands, at least of the heugh; and he would not suffer his lands to be sold.

ANSWERED,—He could have no prejudice; for, if he prevailed, he would either obtain the price, or reduce and rescind the roup, in his option; and they were not selling his right to the lands, but Sir William Dick's.

The Lords found, This being a summary process, it could not be stopped on the discussing of Polwart's interest; and that we ought not to lay more clogs on thir purchases, to embarrass them, than the Act of Parliament had done: And, therefore, ordained the roup to go on, but prejudice always and with express reservation of my Lord Polwart's right, as accords; seeing we had several instances, where parties, claiming right to the lands, had interposed, yet were rejected, and not suffered to stop the roup: as in Sir George Lockhart's gift of the recognition of Laswade; in Sir Godfrey Mackulloch's interest on Gordon of Cairdness's estate; in the tailyie of Bonnington's lands, and sundry others. *Vol. I. Page* 636.

1694. *July* 21. KER of HUNDWOOD, and KER of GRANGE, *against* KER of MORISTON, &c.

IN a process, pursued by Kers of Hundwood and Grange, against Ker of Moriston and his tutors, the king's advocate appeared, and craved who would abide by the execution of the citation, in regard he would improve it as false: seeing it bore to be subscribed by Robert King, messenger; and he, with the witnesses, declared, that they disclaimed the same, as forged.

The Lords, on this, caused apprehend Grange, and John Alvis, his agent in the cause, to be imprisoned until the affairs were tried; and, in the mean time, to be kept separately till examined, that they may not concert and agree upon a premeditated answer. It seemed a silly forgery, for saving a few dollars' expense, to hazard themselves; it not being the execution of a horning, inhibition, or the like diligence, but of a common summons. But these go very oft unnoticed; and, when they are suspected, few will venture to propone the falsehood *peremptorie totius causæ*, lest, by the bribing of such mean parties, they may succumb. But Grange, by a petition, condescending upon one Cameron, a messenger, who gave him King's execution, he was liberated, and King ordained to be apprehended. *Vol. I. Page* 636.

1694. *July* 24. JOHN ROBERTSON, Portioner of Meiklegovan, *against* The JUDGE and FISCAL of the Regality of Glasgow.

MERSINGTON reported a bill of suspension, John Robertson, portioner of Meiklegovan, against the Judge and Fiscal of the regality of Glasgow, for an exorbitant fine of £4 sterling, for a staff found beside him, said to be stolen, and £3 sterling of expenses, and £200 Scots to their fiscal; in regard, he said, if they found the said staff beside him, he was content to be condemned in the whole libel; and that the pursuer had given his *juramentum in litem.*

But the Lords thought this procedure too arbitrary, for finding only the *res furtiva* beside him; and therefore passed the bill of suspension.

Vol. I. Page 636.

1694. *July* 24. The LADY ENTERKINE and LAMINGTON, *against* CRAWFURD of DRUMSUY.

THE Lords found the letter discharging the tenants to pay Drumsuy, the tacksman, in respect he was slack in paying the tack-duty,—was not a liberation of him from the tack, (for that he could not do,) but that he may have retention, on account of the damages by that stop. *Vol. I. Page* 636.

1694. *July* 24. COUPER *against* MEIK in Kirkaldy.

THE case was, If a vitious intromission may be proven against a party dead, when it is not constituted by a process against him during his life; or, if there was a process, but not come the length of litiscontestation. The Lords found, conform to the famous decision in July 1666, *Cranston* against *Wilkyson*, that, not being established in the intromitter's lifetime, it could not be proven now to infer an universal passive title; because the party, if quarrelled in his own life, might have had several defences to purge his intromission, which may be altogether unknown to his successors; but that it could only make the successor liable either *secundum vires inventarii*, on their intromission, or *in quantum lucratus, et ad valorem* of what they shall prove the defunct intromitted with.

Vol. I. Page 637.

1694. *July* 24. LUMSDEN of AUCHINLECK *against* LIETH of HARTHILL.

LUMSDEN of Auchinleck against Lieth of Harthill, who had obliged himself to pay 2500 merks of tocher with his daughter; but 1000 merks of it was suspended till he should attain possession of his lands of Harthill. And now, it being contended, that he behoved to be liable, because he had denuded himself of the right he had in favours of his eldest son, and so had put it out of his power to purify the condition:

The Lords found this was a conditional obligation, not yet purified; in regard both he and his son had depending processes for the recovery of the estate, and it did not appear he was *in mora;* and it was not presumable, that, for eviting this 1000 merks, he would be negligent in pursuing: yet they limited him to a year to perfect his diligence, otherwise to be liable; seeing, it being *conditio potestativa*, at least *mixta*, he might delay for ever. *Vol. I. Page* 637.