

but he was willing to give it up to be cancelled; and offered to prove, by the comuners, that this was all that was treated on.

The Lords found the contract signified nothing if it did not oblige him to dis-
pone the adjudication also; and refused to examine witnesses anent the meaning
thereof; thinking it clear enough of itself, and to be interpreted against him
qui potuit legem apertius dicere. *Vol. I. Page 650.*

1694. December 14. The CREDITORS of SCOT of ARDROSE *against* GEORGE
GRAHAM and the LADY LARGO.

THE Creditors of Scot of Ardrose, against George Graham and the Lady
Largo, who opposed the sale of these lands; because, by a condescendence and
agreement, there were lands given off for three parts of their principal sum to
all that should subscribe and enter into the said agreement; and the Lady
Largo had lands effeiring to the fourth part of thir sums; and Spence's ap-
prisings, acquired in by Sir Daniel Carmichael, which was the preferable right,
was communicated to them.

The Lords found, they having divided the lands amongst them in this man-
ner, they were proprietors of their several localities, and could not be forced to
consent to a roup of these lands except they pleased; and that Sir Daniel's oath
did not restrict his apprising, as was alleged, but only showed the inductive
cause why he acquired it to secure his other debts. *Vol. I. Page 651.*

1694. December 14. SIR JAMES COCKBURN *against* SIR ROBERT MILN of
BARNTON.

RANKIELER reported three points in the count and reckoning between Sir
James Cockburn and Sir Robert Miln of Barnton. The *first* was, Whether Sir
Robert was bound to produce instructions for the £1200 which Sir James yet
wanted of the £24,000 of the salt sent abroad the time of the preëmption in
1673. The Lords thought the presumption lay against Sir James; seeing he
confessed he had got the instructions of the £23,000, and, by virtue thereof,
had uplifted; that it was probable he had also gotten the rest; and therefore or-
dained Sir Robert Miln to depone if he has any of these instructions, or if he
delivered them.

The *second* was, Who was to be at the expense of the collectors' salaries the
time Sir Robert had it? The Lords found, seeing the profit thereof was made
over to Sir James, the *onus* followed the *commodum*, and he behoved to undergo
the burden thereof.

The *third* was, anent the account of charge and discharge given in by Sir
Robert, whereby he charged himself with £17,000, and in the same writ dis-
charges himself; but does not produce the instructions, alleging they were
burnt with his house at Leith in 1682; though regularly you cannot both *ap-
probare et reprobare*, and you must not divide the writ, but take it complexly