

1695. *February 5.* MR JOHN LAUDER *against* DOUGLASS and OTHERS.

CROCERIG reported Mr John Lauder, minister at Eccles, against Douglass, chamberlain to the Earl of Roxburgh, and other heritors of Lilliesleaf, for the stipend thereof *anno* 1690, he having preached there as Presbyterian minister, upon the call and invitation of sundry in the parish. Douglass, as having a gift from the Earl of Roxburgh, patron, applied it to the buying of communion-cups, and other pious uses, in the terms of the Act of Parliament. The question was, If it was truly a vacant stipend: For, if it was, the patron might freely dispose upon it; but, if it was not, then the doubt occurred, Whether the minister behoved to prove, that he had the call and concurrence of the plurality of the masters and heads of families in the parish; as was done in the case of Borthwick, Hamilton, &c.

But the Lords considering that he had the attestation of the presbytery anent his service there, this was judged sufficient probation, without farther instruction. What further moved the Lords to prefer the minister was, this church continued vacant a year or two after the year acclaimed, so they had these vacant stipends to defray their expense in buying the communion-cups, &c.

*Vol. I. Page 666.*

1695. *February 6.* THE CREDITORS of HAY of MONKTON *against* The LADY.

PHESDO reported the competition between the creditors of Hay of Monkton and the Lady. They first craved preference for the debts contained in her husband's disposition, with which he was burdened, and must be an *onus reale*, and preferable to her. ANSWERED,—She was not concerned therein, as they were neither mentioned in the procuratory of resignation, precept of seaisine, nor infestment; and, whatever buyers may do, yet wives and their friends go no farther back than the husband's seaisine; and this being since the Act of Parliament 1685, anent inserting all these clauses in tailyies, and being omitted, the general clause relative to the provisions, "within written," cannot militate against her. *2do.* They founded on their gift of recognition, and which they declared they only made use of to secure the 6000 merks paid for it.

The Lords, thinking the points of general importance, named some of their number to endeavour to settle the parties.

*Vol. I. Page 666.*

1694 and 1695. GORDON of DAACH *against* GORDON of TECHMUIRY.

[See the prior parts of this Case, *supra*, pages 51 and 77.]

1694. *January 18.*—MERSINGTON reported Gordon of Techmuiry against Gordon of Daach. The Lords adhered to their former interlocutor, and preferred the children of the first marriage to the son of the second: for, though a clause of conquest, in a contract of marriage, does not impede a father's domi-