

1695. *February 8.* JOHN LAW, Writer, *against* ARCHIBALD KER, Factor for the Estate of Monkton.

THE question was, Whether the factor was bound to hold count to John Law, a creditor-arrester, who had obtained a decret of forthcoming against the tenants, on their oaths, confessing what rents they owed, conform to that decret; or only for the sums contained in a decret which the factor had obtained against them, wherein many deductions were allowed them, and payments subsequent to John Law's diligence.

The Lords found the factor only liable conform to his own decret; but, in so far as any articles were unwarrantably paid, or collusion appeared, they rectified the same, allowing John Law recourse against the tenants who had exhausted the fund of his payment. *Vol. I. Page 667.*

1695. *February 9.* SIR WILLIAM BRUCE of KINROSS *against* LORD BRUGHTIE, &c.

IN the spuilie of teinds, pursued by Sir William Bruce of Kinross against Lord Brughtie, &c. it fell to be debated, If possession of teinds, or an infestment, might claim the benefit of a possessory judgment, as well as an infestment of property, seeing the tenth part is possessed the same way with the other nine. Some thought it was but like a servitude, and infestment of annualrent, which cannot claim the privilege. But the generality thought it had the right of a possessory judgment. *Vol. I. Page 668.*

1695. *February 12.* JANET CRIGHTON *against* The EARL of NITHSDALE and the TENANTS of DUNCOW.

ARNISTON reported Janet Crighton against the Earl of Nithsdale and the tenants of Duncow. OBJECTED,—The bond was registrate in the wrong jurisdiction, and so the extract was no more but a copy. ANSWERED,—We now produce the principal. REPLIED,—This cannot sustain the charge of horning given.

The Lords found it sufficient.

Then ALLEGED,—Both the obtainer of the decret of pointing of the ground, and the defenders in it, are dead. ANSWERED,—By the late Act of Parliament 1693, the heir or executor, producing their retour or confirmation, are allowed to have summary process: Which the Lords sustained; and that such decreets being real *contra fundum*, they subsisted against all possessors, though the former, against whom the decret was obtained, were either dead or removed out of the ground. *Vol. I. Page 668.*