

1715. *February 1.* GRAHAM of Benchils *against* BLAIR of Inchyra.

BENCHILS being habit and repute a weak person, though not altogether fatuous, grants a disposition of his lands, which were worth about 800 merks yearly, &c. in anno 1706, in favours of Inchyra, his brother-in-law: which disposition proceeds upon a narrative of money received; which, with 2000 merks, to be paid, not to the granter, but to Sir James Ramsay of Bamff, and 6000 merks payable to his own and his wife's friends, for which Inchyra gave bonds, but containing irritances, in case the disposition did not subsist, and with reservation of the granter and his wife's liferent,—is declared to be the adequate price of the lands, containing also absolute warrandice. Thereafter, in January, 1707, and after the decease of Benchils' lady, there is a contract entered into betwixt them, wherein Benchils disposes to Inchyra all his debts, sums, &c. that did then or should thereafter belong to him, with the rents of his lands; and Inchyra binds to aliment him, and clothe him, but only out of his lady's thrift, &c. and to relieve him of his debts, not exceeding 2000 merks, and to pay him 200 merks yearly. And in February thereafter, Benchils renounces in Inchyra's favours his liferent formerly reserved.

The Lords, before answer, having allowed a conjunct probation of the facts and qualifications alleged for either party; and many witnesses being thereupon examined:

The Lords reduced the disposition made by the pursuer to the defender, in December, 1706, with the contract betwixt them in January, 1707, and the assignation, disposition, and renunciation of the pursuer's liferent to the defender in February thereafter; and decerned the same to be void and null.

But, upon a reclaiming bill and answers, the matter was delayed till June.
Act. Graham. Alt. Lord Advocate. Mackenzie, Clerk. Vol. I. page 64.

1715. *February 3.* THOMAS HENDERSON, Writer in Edinburgh, *against* The
MAGISTRATES of JEDBURGH.

A merchant in Jedburgh being apprehended there, at the instance of James Hamilton merchant in Dunbar, for L58 Scots, in anno 1679; and Robert Ainsly, then bailie, being charged to incarcerate him, did it accordingly, but thereafter set him at liberty: Upon which a subsidiary action being insisted in against Ainsly, and the then magistrates, there was a decret obtained before the Lords in 1680, decerning also for L80 of expenses and damages; which decret is by progress now in the person of Thomas Henderson, Writer in Edinburgh, who now insists in a process against the present magistrates, for payment of the sums decerned for in that decret. In which action,

It was for the defenders ALLEGED,—That the present magistrates were not cited, though the former were; and since the action was not insisted in during their office, the citation was of no effect; First, As to them, because now they have no concern in the town, being *functi*: nor are the present magistrates oblig-