ing Sir Patrick Murray, who was not an actual residenter amongst them, to be their commissioner, contrary to the king's letter in 1674, and the Act of Burrows: on which Act they charged him and the Burgh; and he presenting a bill of suspension, (the Duke of York present,) the Lords found the said Town of Selkirk had contravened the king's letter, and Act of Burrows made thereon, discharging the Burrows to elect any to represent them but actual trafficking and residenting burgesses: and in the last Convention of Estates, in June 1678, none but such were admitted: but I think it would be enough in law that they once had been burgesses and traffickers. And found the said Act of Burrows obligatory; and that Selkirk had incurred the fine: which was alleged to be 1000 merks each voter, they being nineteen persons on the council. But this fancy of the king's advocate was rejected by others, who, more analogically to law, thought the 1000 merks was only due by the whole aggregate body of the community electing. But in regard, by the act of election, it did not appear who had voted for Sir Patrick, they directed a commission to Haining, and some other neighbouring gentlemen, to take the oaths of all who gave suffrage, to whom they gave their votes; and reserved to themselves to modify the fine at the advising.

Which commission the Lords knew could not be reported this Session; and so, upon the matter, the decision of the question devolved to the Parliament itself: especially seeing in law the election might be valid, though they had incurred the penalty; like a tack set by a minister without consent of the patron, as is recorded in Dury, *Nov.* 9, 1624, *Sir Thomas Hope.*

Yet all this cautiousness did not keep the Lords of Session from the censure of some, that they, on the nose of a Parliament, came so near the deciding on dubious elections, which seemed only competent to the Parliament itself. But the Duke of Albany's presence influenced somewhat this decision.

However, this justified them, that the Parliament, by their judicative power, voted and found all the elections of gentlemen for burrows null, unless they were actual residenters and traffickers; though of old they used to be represented by any they thought fit to choose, though they were not actual traffickers and residenters. *Vol. I. Page* 148.

1681. *November* 11. JOHN COUPAR *against* GEORGE HERIOT.

IN the action pursued by John Coupar, for Mr Henry Blyth's behoof, against George Heriot, for payment of several sums of money, contained in Lieutenant-Colonel George Heriot's bonds, (to whom he was heir,) whereto they had procured assignations; of which bonds sundry wanted witnesses, and so they were admitted to prove them holograph, and to supply and adminiculate the subscription to be his: and they having accordingly adduced witnesses, and their depositions being advised this day, The Lords found it proven, by the witnesses and writs produced, that the five bonds and tickets libelled and denied, *viz.* the bond granted to Mr George Gibson, to John Ramsay, James Park, James Balmain, and John Robertson, also the account due to Andrew Cassie,—were either holograph, written and subscribed by the defunct George Heriot, at

least Cassie's account was subscribed by him. And find Mr Henry Blyth's oath does not prove the allegeance referred thereto, anent the eases, abatements, and compositions he got from the respective creditors when he paid them; and which eases would have accresced to the said George, because the said Mr Henry transacted only as his factor; and therefore decerned.

But on a bill given in by George, the Lords, on the 16th of November, ordained Mr Henry to be examined anent the eases he got, because he had only deponed as to one creditor called Bennet; and in the meantime stopped the decreet. *Vol. I. Page* 161.

1681. *November* 10.—There was but slow procedure as yet in the Session, through the demur and interruption which Advocates and Agents made of taking the test enjoined by the late Act of Parliament.

1681. *November* 12. Sir David Carnegie of Pittarrow *against* Strachan.

Upon a bill given in by Sir David Carnegie of Pitarrow, the Lords, by their deliverance, refused to force or oblige the charger to insist in discussing the reasons contained in Sir David's bill of suspension against one Strachan, charger; but if the clerk of the bills (who stopped the passing or expeding the said bill on pretence that sufficient caution was not offered,) refused to accept of a sufficient cautioner, then the Lords allowed Pittarrow the suspender to protest against the clerk of the bills for damage. *Vol. I. Page* 162.

1681. *November* 17. George Mitchelson *against* Robert Mitchelson.

George Mitchelson in Dalkeith having charged Mr Robert Mitchelson, his son, on his bond, for payment of three hundred merks of annuity; and he having suspended on sundry reasons,—the Lords looked on the son as very ungrate, the father having denuded himself of his all to him, save this aliment; and, upon Lord Forret's report, repelled the whole reasons *quoad* the annuity; but suspended the charge *quoad* the termly failyies and penalty of the bond, and as to seventy-seven pounds Scots acknowledged by the charger's oath to have been received by him; and assoilyie from the suspender's reduction. And find the letters orderly proceeded for the rest of the bygone annuities, and in time coming, the term being first come and bygone; but ordained the father, charger, upon payment made to him, to consent to the loosing of the arrestments laid on by him on his son's maills and duties. And modify an hundred merks Scots as damages sustained by the father, by the son's suffering the father to be distressed and imprisoned for these debts, for which he had granted back-bond to relieve his father, and obliged himself to pay them. *Vol. I. Page* 163.