1688. *June.* MR JOHN CURRENCE *against* SIR CHARLES HACKET.

IN a pursuit for payment of a bond, the debtor alleged payment of L.100 sterling thereof, and, for proving, founded upon a receipt of L.50 from James Foulis, and a holograph note written by the creditor upon the back of the bond, bearing, that L.50 was received from Sir Robert Murray. It was alleged for the pursuer, That the receipt and holograph note related to one and the same L.50; and the mistake lay here,—That Sir Robert Murray had treated with the pursuer for Sir James Hacket the debtor, and James Foulis paid the money, and the holograph note was writ on the bond when it was sent to Scotland, that the factor might not pursue for it. 2. The holograph note is not probative, because not subscribed. The Lords sustained the note as a distinct payment.

Page 113, No. 424.

1688. *June.* MARION MONTEITH *against* Her BROTHER GEORGE.

ONE, pursued as a vitious intromitter, made this defence, That he had right from the donatar of the defunct's escheat, which was declared. 2. He was executor nominated to the defunct. Answered for the pursuer, That the gift was simulate, and procured by the rebel's own means, as appears from his continuing in possession of the goods all his lifetime, and disposing thereof in his testament when he died. The Lords found the gift was simulate, and decerned against the defender, as vitious intromitter, the testament not being confirmed now several years after the defunct's death.

Page 118, No. 440.

1688. *June* 9. MR WILLIAM THOMSON'S DAUGHTER *against* DUKE of HAMILTON.

IN a pursuit at the instance of Thomson against the Duke of Hamilton upon a precept,—Alleged for the defender, That the precept was null, as wanting writer's name and witnesses, and not holograph. Answered for the pursuer, That he offered to prove the subscription by the Duke's oath. And the Duke having deponed, that the subscription was not his handwrit, to the best of his knowledge, it was alleged, at advising, that the oath was not positive, but only an oath of credulity, and that the precept could be adminiculate by other papers produced by the defender, which imported a homologation of the precept. The Lords found the oath did admit of no other probation.

Page 211, No. 746.

1688. *June* 13. AUCHINHARVEY *against* DUKE of HAMILTON.

IN anno 1637, Duke James Hamilton granted a bond for L.204 sterling, pay-