

the church, whither he had not freedom to go, but should be remitted to the meeting-house.

The Lords repelled his reason of suspension, and ordained him to satisfy in the church.
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1688. *June 12.* MARGARET SETON *against* MARGARET CRAIG.

THE case of Margaret Seton against Margaret Craig, being advised, the Lords found Craig's uplifting the annualrents of her brother's part of the sum, in the town of Mussleburgh's hands, did not infer a general passive title against her, as heir to her brother, but only *quoad valorem*, for restitution, and for affecting her brother's part, seeing she had a probable ground.

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1687 and 1688. RICHARD CUNNINGHAM *against* The DUKE and DUCHESS of HAMILTON.

See the first part of the Report of this case, Dictionary, page 12,328.

1687. *July 14.*—IN Richard Cunningham's case against the Duke and Duchess of Hamilton, mentioned 18th March 1686:—it was ALLEGED,—This being a debt of Duke James's in 1637, and the present Duchess, his daughter, having the estate, not as heir of line to him, but as heir of tailyie to Duke William, her uncle,—his heirs of line must be first called, and discussed; seeing they condescended on a subject of discussion, *viz.* the Lady Southesk is infest as heir served to Duke William, her father, in the barony of Innerwick.

ANSWERED,—This is a dilator defence after peremptors of payment were proponed, and after acts, commissions, and reports in the cause, and witnesses led on presumptions of payment.

REPLIED,—It was already proponed, but received no answer; and so, not being repelled, is yet entire; and the acts are only before answer. And whereas it is alleged, that it is needless to call the Lady Southesk, seeing she will allege that the heirs of line of Duke James are bound to relieve her; it is answered,—There is another daughter of James's yet uncalled, *viz.* the Lady Cassilis: and the Lords found co-heirs behoved to be called, *Stair, 24th January 1672, Laird of Lusse*, where they would not so much as allow the heir of line to be called *incidenter* in the same process.

The Lords here found the heirs of line to Duke William behoved to be both called and discussed, ere the present Duchess (who is heir of tailyie,) be obliged to answer; but allowed an incident diligence for citing them in this same action, in regard that defence got no answer before by the act. *Vide 13th June 1688.*
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1688. *February 24.*—Richard Cunninghame's action against D. Hamilton being called; the Duke craved that Sir John Dalrymple, who was not yet ad-

mitted a Lord, might be allowed to plead for him. The President told him that could not be done, he being now entered on his trials. The Duke contended, that Sir John Gilmore had pleaded for his son-in-law, Sir John Nicolson, after he was President. But that was because he was declined from judging in it; so the cases were not alike. *Vol. I. Page 500.*

1688. *June 13.*—The case of Richard Cunningham, and the Duke of Hamilton, mentioned 14th July 1687, was decided; and the Lords sustained the adminioles and presumptions adduced by the Duke, as sufficient to instruct, that either there was no real debt, or, if there was, that it has been paid, or included in posterior bonds and transactions betwixt them.

A bill was given in against this, and the Lords refused it, unless they adduced other qualifications to fortify and astruct the bond, than what were already made use of in the decret.

Thus the Duke did not lose all his causes, as he pretended.

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1688. *June 16.*

It was debated, if bygone annualrents of a sum in a decret, bear annualrent after denunciation, as well as the principal, by the 20th Act 1621. Stair affirms it, *tit. 10, § 75*; and there is a decision for it, *31st January 1663, Carberry*; and, after apprising, annuals bears annuals. Yet some doubt of this, because *anatocismus* is prohibited by law, though annuals may be accumulated by paction into a principal by bond.

2do, Quæritur whether a wife be bound to stand to tacks set by her husband of her liferent-lands, not for an elusory duty, but even to the full avail, whereof there are years to run at his death and her entry; seeing a tutor's tack expires with his office, and she may desire to possess the lands herself; and, like a ward, the tack should sleep till it end. See Craig on this point.

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1688. *June 28.* MARY KIRKPATRICK and JAMES HOME *against* SIR ROBERT GRIERSON of LAGG.

THE case of Mary Kirkpatrick and Mr James Home, minister at Kirkmahoe, her husband, against Sir Robert Grierson of Lagg, was debated and advised. John Kirkpatrick being debtor to the said Mary, his sister, in a bond of 2000 merks; and having an infetment for 7000 merks in Jarden of Applegirth's estate, he dispones it to Lagg, on his back-bond, that he had received the said disposition for 2000 merks of debt, which John was owing him, and for security of what farther sums he should pay out for him. Mary inhibits John, her brother, on her bond; after which, Lagg takes a discharge from John of his back-bond, and transacts and acquires a right to sundry others of his debts; and Mary having adjudged her brother's right to the 7000 merks, and pursu-