ANSWERED to the 1*st*,—They were *in bona fide* to intimate at such churches, as the Lords' act designed them as adjacent, which was the rule. To the 2*d*, they opponed the act 1681, which allows to sell the whole estate, or any part thereof, providing it be not chosen or picked out *in æmulationem*, and to the prejudice of the other creditors; and that it was so found in Tarbet's case, who was allowed to carry on a roup of part of Cromarty's lands.

REPLIED,—The new act of Parliament 1690 alters that, in so far as it mentions "the estate," but repeats not that clause, "of any part of it."

DUPLIED,—*Hoc non agebat* by the last act; and correctory laws must be clear and expressive, else *non præsumitur correctio.*

The Lords allowed them to condescend upon another church in place of that suppressed; and found that no part of the insolvent debtor's estate ought to be omitted, especially if contiguous; and, therefore, allowed them a farther term to execute at that church, and to lead probation of the value of the rest of the estate; and prorogated the roup till these were concluded. But some thought it would be securer for a buyer to renew the haill citations, than to bottom his right upon a controverted act, in a new introduced law or custom. *Vol. I. page* 517.

November 22.—The roup of Bonnyton, mentioned 9th current, being again debated, the Lords found it would be no nullity, in such a process, though the creditor pursuer of it did not libel the whole lands and rights belonging to his bankrupt debtor, providing he did not *de industria* leave out some, and pick out the most saleable parts; and that he was not bound to take notice of the debtor's contraverted rights and pleas, which he might have upon other estates, where he was not in possession; which would force him to search all the registers in the kingdom. But if either the debtor or a co-creditor appeared, and condescended upon omitted lands, in that case the creditor-pursuer of the sale ought to add them to his libel, and lead probation of the rental with the rest of the estate, that the Lords, upon advising their value, might set a rate and price upon the omitted lands as well as the rest. But that this condescendence must be proponed and given *in debito tempore* before the first term for proving the rental, and after that not to be receivable. And, in this case, ordained Gilmerton to prove the value of this land which Bonnyton alleged was omitted; and declared after that was advised, and the *minimum* of the price set thereon, they would issue out a new warrant for intimations at the several parish kirks. And found, they could not have received Bonnyton's allegeance, that he had a farther estate, because he had not proponed it *debito tempore*, had it not been that the intimation was null, one of the parish-churches, *viz.* Caldercleir, being suppressed; which, though it was not nominated as one of the kirks, by the act of the Lords, yet that was on the parties application, and so was *periculo petentis.* *Vol. I. page* 521.

1692. *November* 23. LADY SCOTSTOWN and COLQUHON of Tullyquhen, her Trustee, *against* DAVID DRUMMOND of Innermay.

RANKEILOR reported Colquhon of Tullyquhen, and Lady Scotstown against Drummond of Innermay, about the reduction of Stewart of Rosyth's disposition

to Innermay *ex capite lecti.* The Lords, notwithstanding their late act of sederunt, explaining what was to be esteemed going to kirk and market, yet could not determine the relevancy of the acts, but only, before answer, allowed either party to adduce what probation they could, anent the condition of his health or sickness at the time he subscribed this disposition now quarrelled, and anent his going to kirk or market, or to the election of commissioners; but did not determine whether they would receive equipollent acts to going to kirk and market, and what acts they would esteem as such, but left that to the probation; for certainly one's riding post to London is more than his going to kirk and market. And allowed them also to prove the manner of his supportation when he performed these acts; but thought there behoved to be a more pregnant qualification of his being supported here, than in other cases, because Rossyth was lame from his youth, and ever used a staff, and after a fall from a horse, used also a stilt. But all was reserved to the advising. *Vol. I. page* 521.

1692. *Nov.* 23. IRVING of Belty and his Daughter *against* ROLLAND of Disblair.

IRVING of Belty and his daughter *against* Rolland of Disblair. The Lords suspended the letters; and found Disblair, her curator, had reason to look to her portion, and that she could not disclaim the process; and though a father be administrator of the law to his daughter while minor, yet when he is debtor to her by a bond of provision, and has married a second wife, he cannot be curator *in re propria*, but she might choose other curators; and that the act of Privy Council, in 1688, did not annul the curatory, but only ordained his daughter to be delivered back to him; which was due by his paternal right, though he was a Papist. And if she refused to concur with the curators in uplifting and discharging the rents, (as she might,) then they might seek to be exonered of their office of curatry; and if the minor thought they had not found sufficient caution, she might either remove them, or cause them find better caution. *Vol. I. page* 521.

1692. *November* 24. SIR WILLIAM BINNY and SIR ROBERT BAIRD *against* JOHNSTON, LECKIE, and CRAWFURD.

SIR WILLIAM BINNY and Sir Robert Baird against Johnston, Leckie, and Crawfurd, merchants in Glasgow, craving to be reponed against a decreet *in foro* obtained by Andrew Alexander, factor, at Rochell, against them. The Lord President thought this was not to be reputed such a decreet *in foro* as was irreducible and unquarrellable; for it was not the proponing dilators or defences against the relevancy of the libel only that made it *in foro*, (for advocates might propone such without advice from their clients,) but defences *in facto* to be proven. The rest of the Lords thought this distinction against the act of regulation in 1672, and that it would open a door to loose any decreet *in foro*, and to hold fast again, as the Lords pleased to call it, a decreet in absence, or on compearance. Therefore,