

alleging he needed not depone at all, whether it was resting owing unpaid, because he neither possessed as a tenant to Sir John Clerk, from whom he did not take it, nor as a subtenant to the Duke of Gordon, but was merely a precarious possessor, for a few weeks after the term, and then removed; and any right he possessed by, was by the *tacita relocatio* of the Duke of Gordon; and on his removing, Mr. Thomas Gordon, the Duke's writer, entered, and his possession was the Duke of Gordon's. The Lords found, that any time he possessed could not make him liable, not being warned; and assoilyied Aberdeen. *Vol. I. page 531.*

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1692. *December 13.* LADY ROSYTH *against* DRUMMOND of Innermay.

LADY ROSYTH *against* Drummond of Innermay. The Lords found the restriction the Lady had given of her jointure, of fifteen chalders of victual, to 1200 merks, providing it were punctually paid, at least within thirty days after each term, was not a favour merely personal, but extended also to her son's singular successors, and that they could not pretend ignorance of the hazard of the irritancy; but yet that it did not totally annul and forfeit the benefit in all time coming, but only for that term wherein it was incurred; so that if, by laying the partial discharges together, it appeared 1200 merks was not paid her within a month after the term of payment, for that year she was not bound to accept of the restricted sum, but might recur to the full benefit and extent of her contract, notwithstanding of her *remissio juris*, which was only conditional; but then she bore the public burdens *pro tanto*. *Vol. I. page 531.*

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1692. *December 7 and 13.* JOHN STRAHAN *against* PATRICK TELFER.

*Dec. 7.*—JOHN STRAHAN, writer, *against* Patrick Telfer. The Lords found the bond of cautionry given by John Strachan to Telfer, for presenting George Smith, and paying what he should be decerned in, null, on thir three grounds; because the Lords had decerned them to find caution to one another, which Telfer failed to do, finding only Robert Curry, a broken man, cautioner, which being rejected, Strahan's bond was *causa data causa non secuta*. *2do*, That Telfer was *in mora* in raising his wakening, and discussing his claim *against* Smith. *3tio*, That Smith being now dead, and this being of the nature of a presentation and *cautio judicio sisti et judicatum solvi*, it was by Telfer's fault turned imprestable.

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*December 13.*—ON a bill given in by Telfer *against* Strachan, about the bond of cautionry declared null, *supra 7th Dec.* current; the Lords found the last ground of reduction not solid, viz. that being *cautio judicio sisti et judicatum solvi*, it expired with the death of the principal party, for they thought a cautioner *judicatum solvi*, as Strachan was, became not liberate by the principal's death; but sustained his *absolutor*, and reduced the bond on the first two grounds, and added to the first,