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. *Vol. I. page* 528.

*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 *absolvitor*, and reduced the bond on the first two grounds, and added to the first,

that Curry was either then broke or suspected; seeing there was adjected to his bond an attestation of him as sufficient, which was then required, but never subscribed. *Vol. I. page* 531.

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1692. *December* 13. The Younger Children of MALCOLM of Balbedie *against* MALCOLMS their Elder Brethren.

THE Lords advised the pursuit by the younger children of Malcolm of Balbedie against their two elder brethren; and decerned them to grant bonds of corroboration for their principal sums, contained in the provisions destinate to them by their father, and that conform to the articles of agreement made betwixt the whole bairns, in their father's lifetime; and this, notwithstanding a posterior agreement, made by the father with his two eldest sons thereafter; for the Lords found that transaction could not derogate from the prior *jus quæsitum* to the children, without their own consent; and found, this was not like a price of lands, to stand affected till all the incumbrances were purged, but like a bond given by a buyer, to one of the seller's creditors, and that they knew of this recognition before they entered into the articles; and as to the abatement each of them were to give, of their annual-rents, during the Lady Innerteil's life, found it was not twenty shillings Sterling of L.100 Sterling of annual-rents, (though so worded in the articles,) but *e contra* the sixth part of the annual-rent of L.100 Sterling, viz. a retention of one of six in the hundred; and first, they attempted to clear it by the former payments made of the annual-rents; but that not clearing it, some were for taking Balbedie's oath, on the meaning of this ambiguous clause. But the plurality carried it to the foresaid sense, without any farther expiscation. *Vol. I. page* 531.

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1692. *December* 14. The LAIRD of Ottar *against* M'CALISTER of Tarbet.

THE Laird of Ottar against M'Calister of Tarbet. The Lords found his reason of reduction of the bond relevant, not so much upon minority, as that he was *in familia paterna*, and his father administrator of the law to him, and yet caused him subscribe cautioner for him in this bond, and so he was not legally authorised, seeing his father could not be *auctor in rem suam*, as was found between *Sir George M'Kenzie* and *Fairholm* of Craighall, *7th Dec.* 1666. But, in regard he had lain over so long, and that the creditor was going on in an adjudication which ought not to be stopped, (but here it was the first,) they ordained the bond to be produced, that if it appeared from it, that he was minor *in familia*, they would receive it instantly. But if it behoved to bide terms of probation, then they would not stop his adjudication. *Vol. I. page* 531.