1692. *December* 14. JOHN CLERK *against* BESSY M'KITRICK.

JOHN CLERK, writer, against Bessy M'Kitrick. The Lords considered that it seemed her usage had been very bad when in prison, and kept in the woman-house with the malefactors, where no jailor-fee uses to be exacted; and that he had suffered a protestation to pass against himself, though a writer, and did not advert to discuss the suspension; so there was grounds of suspicion of his colluding; yet they found it could not be taken away but by his own oath, that he knew the cause of this bond, wherein he was engaged for her as cautioner, was for jailor-fees, and that it was extorted, and that there was either none or less due, and that he colluded, and had not paid the sum, but was labouring to cast the whole debt upon her. *Vol. I. page* 532.

1692. *December* 15. JAMES BUCHAN of Oikhorne *against* JAMES FORBES of Thornton.

THE Lords advised James Forbes of Thornton's debate with James Buchan of Oikhorne, and found the presumptions on Thornton's side more pregnant, that Maghie had paid the 1000 merks, and so entered to the possession of the wadset; and therefore ordained Mr. John and James Buchans, who had now acquired Maghie's wadset, to renounce the same in favours of Thornton, and to pay him the annualrents of the said 1000 merks, conform to his back-bond; but in regard James's bond to Normand Lesly was not produced, and he might yet be distressed, the Lords ordained James Forbes to find caution to James Buchan, to relieve him of that debt, in case he should happen to be distressed for it at any time hereafter. *Vol. I. page* 532.

1692. *December* 15. JOHN PAIP *against* MURRAY of Keilor, and MAJOR MURRAY.

MR. JOHN PAIP'S action against Murray of Keilor, and Major Murray, who had consented to young Keilor's contract of marriage, burdening his fee only with 12,000 merks; and yet by a private back-bond, of the same date, Keilor declared it should not prejudge Major Murray's debt, which was alleged to be *contra fidem tabularum nuptialium.* The Lords found any such private transaction could not prejudge the liferent provision in that contract to the wife; but that the children procreate of that marriage could not quarrel the said deed, seeing any clause conceived in their favours was only a mere destination, and which they could never reach without being heirs to their father, and so would become liable for his debts, though contracted after the date of the said contract; for he being fiar, what hindered him to sell or dispone it the next day, it only being provided to them as general heirs, and not as special heirs of a marriage, which would make

them more favourable creditors; yet sundry of the Lords were of opinion, that when a man gives a considerable tocher to his daughter, in contemplation, not only of a jointure to be provided to her, but also of the fee of the lands to descend to his grandchildren, it should not be evacuated by fraudulent back-bonds, of even date with the solemn and public contract of marriage, by these who have consented thereto; and that this would encourage fraud. *Vol. I. page* 532.

1692. *December* 16. MRS. HEWAT *against* ANDREW HEWAT.

MRS. HEWAT against Andrew Hewat, for proving his misbehaviour in his father's service. The Lords had formerly refused to admit women witnesses; now she offered to prove by Thomas Spence, servant to Sir James Stewart, the King's advocate. And it being objected, that his master having given his advice for Margaret Blair, the said Hewat's relict, his man got money in the cause;

ANSWERED,—That the money being only for writing the information, and not for deponing, he could not be refused. The Lords rejected him from being a witness. *Vol. I. page* 533.

1692. *December* 16. FLETCHER of Benshaw *against* The EARL of AIRLY.

FLETCHER of Benshaw against the Earl of Airly. The Lords found a difference between a blank-bond and a blank assignation; and that it was not sufficient to prove that Airly had made payment to Fintry, who had first got this assignation blank in the assignee's name, from Goldman, the creditor, unless it were also proven, that the assignation was still blank when Airly paid it to Fintry, and that only *scripto vel juramento* of Benshaw, in whose hands it now is, and in whose name the assignation is now filled up; for they thought it no sufficient warrant to put Airly or any debtor *in bona fide* to pay, that they saw a blank assignation, unless they either saw it at the time of their payment still blank, or that it was then filled up; and in regard he had not paid it all at once, but in parts, therefore the Lords found, either the total or partial payments made by Airly to Fintry, sufficient to exoner,—it being proven by Benshaw's oath, that during these payments the assignation was still blank, in Fintry's hand, and his own name was not then filled up in it, and this at least to be liberate *pro tanto;* though some of the Lords thought, if Benshaw knew that any part was paid to Fintry, as then standing in the right, it should liberate *quoad* the haill. But the rest inclined to the contrary, in respect Fintry was broke, and the warrandice and recourse would signify nothing against him. But this, and many other intricate difficulties arising from blank-rights, convinced the Lords how necessary it might be to discharge such blank conveyances; for whatever they hold in of drawing assignations, &c. for dispatch and expedition of commerce, their inconveniency in being the foundation of fraud and confusion, does more than balance such advantage. *Vol. I. page* 533.