damage, if any of the debtors who fell to her lot turned bankrupt or insolvent, between the time of making the lots and their offering her share to her; because it behoved to be on their risk ay till it was offered or given to her.

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1692. *Nov.* 23, and *Dec.* 20. LORD GEORGE MURRAY *against* SIR ROBERT MILN of Barnton.

Nov. 23.—LIEUTENANT-COLONEL LORD GEORGE MURRAY pursuing Sir Robert Miln of Barnton, for counting to him as an assumed partner of the Customs, in 1681; and he seeking deduction of L.10,000 Sterling yearly, for two Managers, and of 10,000 merks yearly, as donatives given to the then Officers of State; and the rest of the partners refusing to allow them as most exorbitant; Sir Robert contended, that as to Charles Murray of Hadden, he could not quarrel them, seeing he consented. And as for Lieutenant-Colonel Murray, he had no interest to seek a modification, because Barnton had not assumed him, but that the only partner with whom he entered into contract was Hadden; and if Hadden did not assume the Lieutenant-Colonel, Barnton was not concerned, unless it had been intimated to him, and he had acquiesced. For *socii mei socius, non est meus socius;* and, therefore, whatever recourse the Lieutenant-Colonel has against Hadden, his constituent, who assumed him, yet he could not recur against Barnton.

The Lords found the Lieutenant-Colonel could only burden Hadden his assumer, and not Barnton, unless he assented to his in-bringing.

Then Barnton offered to prove by Hadden's oath that they agreed on the foresaid salary and donatives betwixt them; and though his oath could not prove against the Lieutenant-Colonel in other cases, yet here, because of the exuberant trust *inter socios*, it should be received.

The Lords found, that neither the party's oaths, nor their writ upon any transaction among themselves, prior to their assuming of partners, can prejudge the assumed persons of their recourse against their respective assumers for damage; else they might, by such private pactions, have evacuated all their profit, and yet had them liable to bear a part of the loss. But if these agreements had been signified to them before their assumption, and they had notwithstanding entered, then they behoved to have stood to them. Then the Lords proceeded to modify the manager's salaries, and by the oaths of Charles Charters and others, they found it exorbitant, and therefore restricted to L.500 Sterling for the whole. And as to the donatives, the Lords found they had grown considerably, from what was the custom in former years, and that it looked like corruption and bribery, and was given to the courtiers on design of getting an ease of their tack-duty, or the like; and thought it shameful that the Lords, by their decreet, should own any such practice; therefore, they recommended to the President to try what was the perquisite payment in wine, by the tacksmen to every Officer of State, and to study to settle them. *Vol. I. page 521.*

Dec. 20.—The Lords advised the debate between Sir Robert Miln, Charles Murray, and the other assumed tacksmen, (mentioned 23d Nov. last;) and the

President having restricted the donatives to L.5000 Scots, in regard there was so much given the year immediately preceding; and the rest reclaiming at this modification, and urging that there used never *ad summum* to be given more than L.2000 Scots *per annum*, and that if such donatives had been pursued for by the Officers of State, the Lords could not have sustained process for them as a debt; the President inclined to decern the partners to bear a proportion of what they knew was customary to be given, as if they had tacitly consented thereto: but the plurality of the Lords run, that as to Barnton and Hadden, the two principal tacksmen, they behoved to stand to what they acted, or gave away in common: but refused to sustain it relevant against the assumed parties, what was usual in such cases, or what they knew to have been given before; but allenarly to bear a share of what they consented to, or what they now are content to allow.

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1692. *December* 20. JOHN DUNCAN *against* MARGARET AIKENHEAD.

JOHN DUNCAN, writer, against Margaret Aikenhead. It was ALLEGED,—That the Commissaries, in order to evacuate the act of Parl. 1690, that particular dispositions needed not be confirmed, they always preferred the nearest of kin offering to confirm, for the benefit of their own quot and dues. The Lords here preferred Duncan, the assignee, to the nearest of kin, though confirmed; and ordained him to get the possession only of all specially disponed, and contained in the two particular inventories under the defunct's hand, of the same date with the disposition, and whereto it relates, and so are a part of it. Some of the Lords inclined to think it only a legacy, and *donatio mortis causa*, seeing it assigned to all she should happen to have at the time of her decease; but the Lords decided *ut supra*, in respect there was a symbolic delivery, and the right bore onerous causes; and they were not, after so long a time, to be presumed to be her husband's, but her own; and they thought that otherwise the late act of Parliament might easily be frustrated and eluded. *Vol. I. page 533.*

1692. *December* 20. The LADY BROTHERTON, and OGILVY *against* SCOT of Brotherton, and SCOT of Comiston.

THE Lady Brotherton, and Ogilvy, her husband, against Scots of Brotherton and Comiston. The question was, if her liferent, of 1200 merks by year, off her son, should pay the retention of one of six imposed on annual-rents by the act of Parl. 1690.

ALLEGED,—This was an annuity, and no annual-rent; and as it would be free of public burdens, so also of retention; and the 10th act of Parl. 1690, names annuities, but the act imposing retention has *de industria* omitted them.

ANSWERED,—This 1200 merks answered to a principal sum, and behoved necessarily to abide retention, as was found, in 1691, between Mr. Andrew Massy