

Regent, and Dean of Guild Crawford; though the contrary had been sustained in favours of Lady Lochend against Sir John St. Clair.

The Lords found this annuity, though innovated by a submission and decret arbitral, originally corresponded to the principal sum of 20,000 merks, and therefore ought to bear retention.

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1692. *December 21.* SIR ANDREW BALFOUR *against* WATSON of Etherny.

SIR ANDREW BALFOUR, Doctor of Medicine, against Watson of Etherny. This was a count and reckoning about the profits of a Caper, and the prize ships taken by her. The charge being constitute, and the expenses wared out on the Caper, and their loss by its being taken by the Hollanders, being proven only by one witness; the Lords inclined to think it probative now, after so long a time, he having been book-keeper and a common servant and trustee to them both.

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1692. *December 21.* JAMES INNES of Orton *against* WILLIAM FARQUHARSON.

JAMES INNES of Orton against William Farquharson, for payment of 2000 merks, which William's wife had left, having a special faculty in her contract of marriage to do the same. The Lords repelled the first defence, that it was null, being assigned without her husband's consent; for the Lords found his consent to the faculty authorized her sufficiently. As also repelled the second, that she and her husband had uplifted it out of the debtor's hand, and given a discharge of it; for the Lords found, that uplifting did not make it so moveable, as to fall under the husband's *jus mariti*, but it still remained heritable *quoad* the husband, and it was nothing but a change of debtors from one hand to another; and repelled also the third defence, that she renounced her faculty, because that was *donatio inter virum et uxorem*, and so revocable, and *de facto* revoked by her posterior assignation, whereby she exerced the faculty and power reserved to her.

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1692. *December 21.* JAMES INGLIS, Minister, *against* ABERCROMBIE's Factor and Tenants in East Barns.

THE Lords refused to repon the said factor to his defence of *bona fide* payment, not only in respect of the circumduction in the decret *in foro*, but also because his factory only empowered him to uplift and sell the victual, and to pay to the creditors as they should be ranked; and *ita est* Mr. Inglis is preferred to