

and that Wishaw was not bound to relieve him thereof. Some of the Lords inclined to take a probation, before answer, of the way and manner of the Duke's and Wishaw's possession of that chamber. Others were for finding the Duke liable for the chamber-rent so long as Wishaw was paying him in the rests, the last partial payments being in March 1674. But the plurality assolyied Wishaw.  
*Vol. I. page 541.*

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1692. *November 23*, and 1693, *January 3*. KENNEDY *against* HANNAY.

*Nov. 23.*—BETWEEN Kennedy and Hanna, Deacons in Ayr, the Lords ordained the custom of that Burgh to be tried, if they fined their Tradesmen for absence from their meetings, and in how much; and found it relevant that he came after his citation, the night before the meeting, and made his excuse to the Deacon-Convener for his absence, and it was accepted.  
*Vol. I. page 521.*

1693. *January 3.*—Between Hannay and Kennedy in Ayr, mentioned 23d November 1692. The Lords found the fine of twenty pounds Scots imposed by the Deacon-Convener upon him for his contumacy and absence not exorbitant nor illegal, and that, by the customs of Burghs, they might fine their absent members.  
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1693. *January 4*. HELEN MURRAY, Lady Kinuchar, *against* WM. BETON.

DAME Helen Murray, Lady Kinuchar, pursues Mr. William Beton, advocate, on an agreement, for communicating their rights upon the lands of Etherny, and to count to her husband for a part of the rents effeiring to his sum; and he having sold the lands to Watson, so that the annualrent of the price exceeded the rents of the lands, and offering to hold count to her effeiring to the rents, because he got a greater price in contemplation of the house and gardens, and other conveniences.

The Lords found he was liable to count conform to the price, as a *surrogatum* coming in place of the rents of the lands; and brought them in *pari passu* effeiring to their sums.  
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1693. *January 4*. SIR WILLIAM DOUGLASS of Cavers *against* ELLIOT of Stobs.

BETWEEN Sir William Douglass of Cavers and Elliot of Stobs. The Lords found no process, upon an execution of a summons of declarator of nonentry, as vitiate in the date. Some were for annulling it *in totum*; but it was sustained only *ab hoc tempore*, for little informalities, and nullities cast such odious pro-

cesses, when the party is made liable for the whole mails and duties from the citation ; and the Lords remembered they had done the like in 1690, between my Lord Lauderdale and Wolmet, in a non-entry. *Vol. I. page 541.*

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1693. *January 5.* JEAN MORISON and GORDON her Husband *against* MORISON of Pitfour.

JEAN MORISON, and Gordon her husband, against Morison of Pitfour. The Lords found this bond was of the nature of a bond of provision, and needed no evidence of delivery more than other writs ; though it was not granted by a father. Yet here the brother had supplied what the father would have done if he had not been prevented by death ; and having succeeded to an opulent fortune, and bound in law to have alimeted her, had given his only sister a bond of 4000 merks of tocher. And they found there had been a delivery to the mother for her behoof, being then minor ; and though the mother, by her oath, declared the son recalled the bonds into his own hands, and the bond was found beside him at his death ; yet being entire, this did not make it *chirographum apud debitorem repertum*, seeing it contained several clauses in his favours, which gave him a sufficient interest to retain it, viz. a suspension of the annual-rent during his mother's life, and of the principal sum till year and day after her marriage ; before which year and day he died ; with a clause, providing the return of the tocher in case of her decease without children. *Vol. I. page 541.*

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1693. *January 5.* JAMES ELLIES of Stanhopmills *against* ANTHONY HAIG of Bymerside.

MR. JAMES ELLIES of Stanhopmills, against Anthony Haig of Bymerside. The Lords found an allegeance against a clear liquid bond, especially being now assigned, could not be proven, but only *scripto et juramento* ; and did not allow of Mr. William Nimmo, the creditor's declaration, that it was for a disposition of annuity which was never given, and so *causa data causa non secuta* ; and found that Nimmo being now broken, this could not militate against Mr. Ellies, his assignee. *Vol. I. page 542.*

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1693. *January 6.* JAMES RIDDOCH *against* The COUNTESS of ROTHES.

JAMES RIDDOCH's pursuit against the Countess of Rothes was advised ; and the Lords thought it, upon the one hand, severe to restrict purchases of lands, that they should acquire in no other rights, but precisely those that were necessary, and to give the remanent of the price to the debtor who sells ; and, on the other