

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

hand, that it was unjust to give buyers an absolute and arbitrary power to give away the price to what creditors they please.

Therefore, the Lords in the general found, that here between the buyer and seller, any payments made by Rothes, or Mr. James Cheap, or Balbedy, his authors, to Salton, Sir Alexander Ramsay, or other real creditors affecting the lands of Cluny, principally disposed, or the warrandice lands of Gilmerton, were to be allowed to the Lady Rothes for exhausting the price, whether they were preferable rights or not, if they affected the subject. But if they were palpably or evidently defective rights, allowed Riddoch to be heard against them. Some were for taking the oath of Salton, the Master of Stairs, and other creditors yet alive, what they gave down of their sums; that thereby it might give a probable guess what abatements were got from others whose rights were not so valid and preferable as theirs.

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1693. *January 6.* JAMES STEWART *against* The LAIRD of LAMONT.

JAMES STEWART against the Laird of Lamont. The Lords sustained thir two dilators, and found no process. *Imo*, That his dwelling-house was not designed; though it was presumed to be whereby he was styled; but he had no house on the lands of Lamont. *2do*, That one of the witnesses was in the body of the execution, called *Oliver Sinclair*, and the subscription was *Oliver Couper*. And though both thir informalities were mended, and they offered to abide at the verity of the execution, yet the Lords would not allow them to be rectified after they were produced, and instruments taken thereupon by the other party.

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1693. *January 6.* FLETCHER of Benscho *against* The EARL of AIRLY.

FLETCHER of Benscho against the Earl of Airly; who ALLEGED, you cannot get any adjudication, because I have a reduction of the ground of your debt, and offer to prove it extinct by payment.

ANSWERED,—This allegiance may stop all adjudications, which ought to proceed summarily.

The Lords found, if this was the first adjudication, it might be stopped by this allegiance; but not if there were prior adjudications, or comprisings, either expired, or *in cursu*; seeing this creditor was only seeking to make up a title whereon he might call these prior rights to account, or quarrel them.

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