

servation. But the Lords thought there was enough produced here as adm-
 nicles to prove and make up the warrant of the seasine, the original bond being
 also produced; though others inclined to cause them produce the second bond
cum processu. *Vol. I. page 543.*

1693. *January 10.* The EARL OF TARRAS *against* SIR JOHN DEMPSTER of
 Pitlever.

THE Lords advised the debate between the Earl of Tarras and Sir John Demp-
 ster of Pitlever. The Lords, before answer, whether this was true and real pay-
 ment made by Sir John, to the Earl of Seaforth, donatar, ordained Sir John to
 depone if he made actual payment, or if it was a transaction, and what was the
 nature of it, in presence of Keery of Gogar, and Sir Patrick Murray, who were
 comuners at the agreement. Some of the Lords were for declining themselves
 in this case, as they had done between Middleton and Waterside; others for su-
 perseding to give answer till the Parliament met, at least, to the 12th of Febru-
 ary, which is two days after the day to which it is now adjourned; as they had
 done in *Scott of Vogrie's* case against *Sir Duncan Campbell of Auchinbreck.*
 But the Lords had formerly sustained themselves Judges, and given sundry in-
 terlocutors in this cause; so the act, before answer, was agreed upon.

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1692. *December 23, and January 10, 1693.* LESSLY of Balquhain *against*
 IRVINE of Drum.

1692. *December 23.*—LESSLY of Balquhain against Irvine of Drum, and his
 administrators, who sought to stop his general adjudication, and restrict him to a
 partial one, by offering him a progress.

The Lords did not regard his objections against the writs produced as defec-
 tive; for they supplied that two ways, by referring to his oath, that he knew
 Drum's right to his lands these 500 years bygone has been incontroverted, and by
 offering to bring the Chancery-books and other records, for instructing his char-
 ters and retours; neither did the Lords notice much Balquhain's condescendence
 upon incumbrances; for his debts were prior thereto. But they ordained his ge-
 neral adjudication to go out, and would neither stop nor restrict it; because
 there was no party here to renounce the possession, and dispone the parcel, which
 was to be given him off, for his money. Though the President and sundry ar-
 gued, that Drum being a weak man, he was to be repute in the case of a minor;
 and so his administrators might renounce and dispone. But the Lords thought
 this would not secure the adjudger, and that thir administrators had not the power
 of tutors or curators, much less could have a despotic and arbitrary power of con-
 senting, renouncing, and disposing. And though they had all tenderness for sup-
 porting this ancient estate, especially when fallen into the hands of one near to an

idiot, yet they thought they could not authorize his administrators to such an extraordinary act. *Vol. I. page 538.*

1693. *January 10.*—After a great debate, Lessly of Balquhane's adjudication against Irvine of Drum, (*vid.* 23d Dec. last,) was ordained to be extracted; though it was urged, to restrict him to a special adjudication, that by the articles of the minute he had obliged himself, on payment of his annualrents, not to be first adjudger. *2do*, That they would give him a progress, purge incumbrances, and cede the possession. But they failed in all these. *Vol. I. page 543.*

1693. *January 10.* The COUNTESS of KINCAIRDEN *against* MAGHIE of Ballmaghie.

IN the Countess of Kincairden's pursuit for avail of Maghie of Ballmaghie's marriage, the Lords abstracted from the general point of law, and modified it to two years and a half's rent; without determining what should be the precise time at which the estimation should be made, and which of thir four periods to fix on, *viz.* the ward-vassal's age of fourteen years, when he is marriageable, *et cessit dies obligationis*; or twenty-one years, for then *venit dies*; and the superior or his donatar may exact it; or when the superior requires him; after which requisition, he becomes liable on the double avail; or, *4to*, when he actually marries. Some were for making it eighteen, which is the age in law called *plena pubertas*, but it is fit the Parliament clear this; for his estate may increase after fourteen, by adventitious accessions; or may be diminished by mispending; and it is hard that the superior should either gain or lose by these accidents. See *Stair*, 5th January, 1681, Dun.

Vol. I. page 543.

1693. *January 11.* GEORGE MACKENZIE of Rosehaugh, *against* GEORGE LOCKHART of Carnwath, and his TUTOR.

GEORGE MACKENZIE of Rosehaugh, and his mother, against George Lockhart of Carnwath, and Lord Castlehill, his tutor. The Lords sustained the consignation of the money made by Rosehaugh, to liberate him from annualrent; and ordained Carnwath to take it up, and to be at the charges of lifting it, seeing it was offered *debito tempore*, before the term of Martinmas last, and Castlehill declared he would take it, seeing the Lady Rosehaugh would keep it no longer, and instruments were taken thereupon: though it was alleged that the consignation was past from by posterior communing. But the Lords did not regard discourses of agents. *Vol. I. page 543.*