

principal sum, but only a poiding of the ground for his annualrent. Therefore the Lords, in this circumstantiate case, repelled the defence, and decerned in the poiding.
Vol. I. page 545.

1693. *January 17.* AMBROSE COX and — JADDART *against* The EARL OF WINTON.

AMBROSE COX and Jaddart *against* the Earl of Winton. The Lords found the obligation for L.100 Sterling not penal, but due by contract, seeing he had liberty to have imported 800 veyes of salt for it, and they were damnified by not furnishing themselves, and depending on it, and so were disappointed ; but found the bond of L.500 Sterling penal, and that it could subsist for no more but allenarly for annualrent of the L.100 Sterling, and the expenses, and referred to my Lord Reporter to modify it.
Vol. I. page 545.

1693. *January 17.* DR. JAMES WEYMES *against* CAMPBELL of Calder.

DR. JAMES WEYMES *against* Campbell of Calder. The Lords repelled the 1st allegiance, of Haliburton's marrying without the consent of the friends, named by the father, both as *jus tertii*, and that being *in re antiqua* their consent was to be presumed, unless the contrary were alleged : but, as to the 2d, found the cautioner had any defences that were competent to Argyle, the principal, and that Argyle (though he had taken a special act of restitution) had also the benefit of the general rescissory act ; and that his being successor *titulo lucrativo* by his contract of marriage in a locality of the estate, was equivalent as if he had been heir, in which case the said rescissory law favoured him ; and therefore decerned for the annualrents due before Argyle's forfeiture, and due since the Revolution ; and remit the intermediate annualrents to the Commission of Parliament, conform to the express tenor of that act.
Vol. I. page 545.

1693. *January 17.* WATSON, Provost of Dundee, *against* GRAY of Innerighy and LORD CARSE.

WATSON, Provost of Dundee, *against* Gray of Innerighy, and my Lord Carse. The President, and sundry of the Lords, inclined, that the method prescribed in the contract was the rule of counting, and that the two extrinsic sums of 800 merks could not be brought in upon that fund : but the plurality found he might ascribe his intromissions as well for paying the annualrents of these two sums of 8000 merks, as of the 48,000 merks contained in the first contract ; seeing the parties, by a fitted account, had acquiesced in that method, and allowed these an-

ualrents to be also brought in and discounted. What moved them was, lest by this way there was a design of cutting off these two principal sums; for they were not preferable rights on the subjects they affected; and if he got them not paid this way, the Provost might be cut off; and Innerighty being in a weak condition, what was competent against him, was thought reasonable *secundum bonum et æquum* to meet my Lord Carse, Sir Peter Lyon, his brother-in-law, and his assignee.

Vol. I. page 545.

1693. *January 18.* ELIZABETH NEILSON *against* ARMOUR.

The Lords found the compensation founded on, in the decret, not a liquid ground, seeing it proceeded on referring it to the party's oath; whereas if he had intimated it to the cedent, he would have proven it by witnesses; and that the Judge sustained extrinsic qualities, which should have been otherwise proved than by his oath.

Vol. I. page 546.

1693. *January 18.* The LADY WAMPFRAY *against* IRVING of Woodhouse.

The Lords found that the pursuer (though he libelled on a warning) might amend the libel, and add that farther conclusion to it, that being owing several years bygone rents, he behoved either to remove, or find caution for payment of the bygones and in time coming; especially seeing they had gotten a sight of the process since the adding of that member: though some thought that this could not be done after debate, and objections had been made against the warning; and refused to take in his reasons against the tack, that he was minor and circumvened, the lands set to him in tack being a part of his own property; because there was no reduction raised by him on that head.

Vol. I. page 546.

1693. *January 18.* OGILVY of Innerquhairty *against* CARNEGGY of Bracky.

A superior's donatar of a liferent escheat being pursued in a reduction and improbation of the horning, it was ALLEGED, he was not bound to produce the principal horning and executions when they were not at his own instance, but done by third parties; and that all he was obliged to do was only to produce extracts: and that it was so found, in 1683, between Bailie of Littlegill and Douglas.

ANSWERED,—That false executions of horning might escape all trial and discovery, if this held.

The Lords resolved to hear it in their own presence.

Vol. I. page 546.