

you have disposed to me, the creditors will object extinction by your's, my author's, intromission foresaid. Yet sundry of the Lords thought this was no ground to cause Sir John presently count and reckon with him, to deduce off Kilconquhar's bond of 38,000 merks, but was only a ground whereon he should be obliged to warrant him in case of distress. But the Lords adhered to their interlocutor of the 22d December last.

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1692 and 1693. JOHN SCOTT of Sinton *against* JOHN GRIEVE of Pinackle.

1692. *Nov. 18.*—THE Lords repelled the first reason of reduction of the Sheriff's decret, that he had declined him, in regard he dwelt not within the jurisdiction; not so much on account of the first answer, that although he dwelt *extra territorium*, yet the land in question lay within the shire; nor of the second answer, that he had passed from his declinator by compearing, proponing defences, and deponing; for it was thought if any wrong was done, his compearing did not so homologate but the decret might be turned into a libel. But it was repelled in respect of this third answer, that he was cited by the Lords' letters of supplement, which were ordained to be produced; though some alleged supplements can only be for citing parties for their interest, but not principal defenders. As to the second reason of reduction, viz. That the third part, possessed by him, was after mensuration of the whole; and though the marches were set in his own assertion, and so *ubi mensor falsum modum dixerit*, it should be rectified; yet that it had been so divided three years before; relevant to assoilyie him from all bygones of the excess of one hundred pound Scots, which his third part was proven to be better worth than any of the other two parts, as a *bona fide possessor*; he proving it was, conform to that division, made three years before his tack; and that he made offer of any of the parts Swinton the heritor pleased to choose.

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1693. *February 9.*—THE Lords thought there was unfair dealing in Grieve's measuring the land, and that *mensor tenetur de dolo si falsum modum dixerit*; yet, in regard of the former interlocutor, 18th November, 1692, they assoilyied him from the excrescent duty preceding the citation, as *fructus bona fide consumpti*.

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1693. *January 12, and February 9.* SIR THOMAS KENNEDY, *against* BANNATYNE, BONNAR'S Heir.

*Jan. 12.*—THE Lords having advised the case between Sir Thomas Kennedy and Bannatyne, Bonnar's heir; they adhered to the decret *in foro*, and only sustained this process in so far as *utiliter gestum et in rem versum* to Bonnar's heirs; and ordained him to give in a condescence on Cornelius Neilson's expenses, he had wared out *qua factor*, for the heirs; and in so far only as they were profitable,