REPLIED.—That was personal, and not comprisable by a creditor, and could not accresce to them.

The *third* nullity was, that the comprising was led for more than was due, he being decerned for the penalty of the bond; whereas the decreet of suspension finds the letters orderly proceeded only for the principal sum and annualrent, without the penalty. ANSWERED.—It does not assoilyie from the penalty, nor suspend the letters *quoad* that; and so it was still due.

The pursuers first insisted to have the comprising annulled on thir grounds complexly; but afterwards declared they only used them to restrict the comprising and cut off the legal.

Some of the Lords thought lesser nullities than thir had opened comprisings. But the plurality, considering that this was no more a competition between two creditors, but that the lands had been bought on this right, and transmitted through four or five several hands, and each had made improvements, looking on themselves as proprietors irredeemable; therefore they repelled the haill nullities, and did not find them so much as sufficient to restrict the comprising; seeing the note of the registration seemed only to be an error of the writer, and that the faculty was apprisable, and that the decreet of suspension did not liberate them from the penalty, though it spoke nothing of it.

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1693. *November* 30. SIR JOHN CLERK of PENNYCUICK, Petitioner.

SIR John Clerk of Pennycuick gave in a petition, representing he was the most considerable creditor on the Wrights-houses, and that the tenant was removing, and he could not get the same rent; therefore craved he might be allowed to set it at the best avail, for as much as he could get for it, and to uphold and repair the houses that were falling in decay.

The Lords refused the desire of the bill, and left him to do as he would be answerable; for they were not to be curators for all the broken estates in the country, and to be factors to set the lands: their design being to get the Lords' warrant for their actings.

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1693. *November* 30. WILLIAM CRIGHTON of CRAWFORDSTON *against* GIBSON of AUCHINCHYNE.

WILLIAM Crighton of Crawfordston, being infeft in a common pasturage forth of the adjacent lands of Gibson of Auchinchyne; in a declarator, contended, that, by virtue thereof, he had not only summer-grass for his beasts, but had been in the constant and immemorial possession of tilling so much of the servient lands, and sowing it; as also, of mowing the meadows thereof, that thereby he might be furnished with straw and hay for the winter-feeding of his cattle. And it being ALLEGED that these were acts of property, and that a servitude could never carry a right to do such deeds, and was not so much as a title for the great prescription; and so he could not be allowed a term to prove

so extravagant a servitude :—Yet the Lords granted a conjunct probation as to the possession before answer to the relevancy ; and thought forty years' possession might change the nature of the right, and prescribe it as part and pertinent. Sundry of the Lords differed. *Vol. I. Page* 574.

1693. *November* 30. Sir James Wood of Bonnyton *against* His Father's Creditors.

Sir James Wood of Bonnyton, seeking to be factor to his father's estate, offering sufficient caution, and to serve for less, in regard he could augment the rent, and would uphold the house and planting ;—the Lords, on the opposition of the creditors, would not allow the apparent heir thus to screw himself once into the possession ; though it was minded that they had continued Lanton in the possession of his estate as factor, at the desire of some of his creditors.
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1693. *December* 1.—A boy called James Wilson, having forged the Keeper of the Signet's hand in a suspension, and having confessed the same,—the Lords, in respect of his age and ignorance and ingenuity, and that it was *in re minima*, did ordain him to enact himself to perpetual banishment, and to be delivered to one of the Scots captains in Flanders ; with certification, if he returned, he should be pursued and punished for the said crime according to law.
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1693. *December* 5. Hewat *against* Murdoch.

The Lords advised the cause betwixt Hewat and Murdoch, and considered that the father had given up and confirmed the goods that fell to his son by the death of his uncle, and valued them at 2000 merks ; and his shop being afterwards burnt, he alleged his son's goods were therein, and so perished ; and he being on death-bed, on a bill given in by his wife, stepmother to the said Hewat, the son of the first marriage, he was *ex officio* examined, and deponed, That many of his son's goods were burnt. The son had also a probation allowed him, whereby he made it appear, that, ere the fire came to the shop, Hewat, the father, removed most of the ware ; and when the witnesses offered to help him, he locked the door, and said he had left little that was of any value.

The Lords, having balanced the two probations, they found the father's oath could not be the rule ; seeing he could not swear his own exoneration, and seeing there was seven years between the confirming the inventory and the accidental fire, in which time he might have sold them off ; and that he preserved most of his own goods in the shop : therefore they found him liable for the 2000 merks ; notwithstanding some of the witnesses deponed, That, amongst the rubbish, there were scissors, razors, and other iron-work found ; which showed