miles, and crossed the Forth, and was at a rendezvous at Couper: and that it was more pregnant than the probation adduced of his indisposition. Therefore the Lords thought a man who could do these acts of health might have entered himself to prison, and borne the *squalor carceris:* and found the bond of presentation forfeited and incurred; and therefore ordained the cautioner to pay the debt. *Vol. I. Page 595.*

1693 *and* 1694. JAMES IRVING of ARTAMFORD *against* JOHN LIEGERTWOOD.

1693. *December* 28.—PHILIPHAUGH reported James Irving of Artamford against John Liegertwood. The competition was between an arrester of the maills and duties of lands, and an appriser of the same lands long before the laying on of the arrestment; but the appriser had been *in mora,* neither having taken infeftment nor pursued to put himself in possession; and thereupon the arrester pleaded preference. The Lords found the old decisions favoured Liegertwood, the arrester; as Durie observes, 14*th February* 1623, *Saltcoats:* but the Lords of late had preferred apprisers, as on 23*d February* 1671, *Renton, Lord Justice-Clerk,* against *Craigiehall.* And it being remembered that there was a late practick (18*th February* 1692, *Pilrig's Creditors* against *Closeburn,*) in favours of an annualrenter; therefore they forbore to determine the point till they saw what had been done in that former case. *Vol. I. Page 586.*

1694. *January* 20.—The Lords, having advised the competition between Artamford, the appriser, and Liegerwood, the arrester, mentioned 28th December last, and having balanced the decisions on both sides,—preferred the appriser, in regard his lying out of possession so long did not so much appear to be collusive, and in favour of the debtor, as because there were other apprisers contending with him: but declared he behoved no longer to debar other creditors, but enter and possess till he were paid, that then they might have access. *Vol. I. Page 595.*

1694. *January* 20. The TOWN of EDINBURGH and the COLLEGE *against* SIR DONALD BAYN of TULLOCH.

MR John Bayn of Pitcairly having mortified two burseries to Edinburgh College, at £10 sterling each, whereof several years having run up in Sir Donald's hand unpaid,—the question was, Whether these bygone arrears should be added to make the pension of the two bursers greater;—or if it was not fitter to make it a mortified stock and fund, whereon to erect a third burser, at £7 or £8 sterling *per annum,* seeing it would extend to that sum. And, though the Lords inclined to this last, yet, by a vote, they left the application of these arrears to the Masters of the College of Edinburgh, if so be the mortification bore, (which was not in the clerk's hands,) that it was made payable to the Town or College for the use of the bursers; but, if it bore only to be for the bursers' use, the Lords declared they would apply it themselves. Another question was started: that Sir Donald undoubtedly ought to have the presentation and patron-

age of these bursers; because Mr John Bayn, by a paper, left the nomination of those who should be patrons to Sir John Nisbet of Dirleton and Sir William Bruce; and they most partially filled up their own names therein; which could not be the defunct's meaning, else he would have named them: likeas it was on death-bed, and filled up after his decease. There was a former interlocutor sustaining their taking the patronage to themselves; but the Lords were desired to reconsider and review it. *Vol. I. Page 595.*

1693 *and* 1694. HARPER *against* YOUNG.

1693. *December* 28.—SIR William Hamilton, Lord Whitelaw, as probationer, reported the debate between Harper and Young. A creditor, adjudging a wife's right on a tenement of land; the debtor compearing, seeks to stop the adjudication, by offering to produce a progress, and to put him in possession, and restrict him to a part of the lands, and produced her liferent seasine.

ANSWERED,—The Act of Parliament 1672 relates only to adjudications of the property of lands, where it allows to restrict the creditor to a proportion, but cannot take place if the right craved to be adjudged is only a liferent, for then I must have the whole; because, if the liferenter die, the adjudication, in so far as it was unpaid during the liferenter's lifetime, perishes, and ceases with it, and he may lose his money. The President moved, that it might be restricted, if, upon a valuation of the liferent, at four or five years' purchase, that price would extend to more than the creditor's debt, for which he craved adjudication; but it was considered she would not be forced to sell it; therefore, the Lords found, she behoved either to find caution to pay what should be resting of the sum in the adjudication at the time of her death, or else they would not restrict, but let the adjudication go for the haill liferent.

It was also further ALLEGED in this process, That she had a separate right of fee, besides the liferent; in which case, if proven, the progress of the liferent seasine produced was not sufficient to restrict the adjudication.

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1694. *January* 20.—The case was,—If a creditor, adjudging from his debtor an adjudication which the debtor has on a third party's lands, could be restricted to a part of it;—or if his adjudication behoved to be of the whole adjudication sought to be adjudged, being *in cursu*, and the legal not expired. Some thought, if the sum in the first adjudication was much greater than the sum for which it was craved to be adjudged, then they might offer a progress and a part. Yet, the Lords considering the inconveniences that might follow, and that this was not a clear right, as the Act of Parliament 1672 requires, but a back-bond,—therefore they granted a total adjudication, and would not restrict to a part. *Vol. I. Page 595.*

1694. *January* 23. CARNEGY *against* CARNEGY of KINFAWNS.

HALCRAIG reported Carnegy against Kinfawns, his elder brother. The