1694. *February* 9. The EARL of KELLY *against* SIR GEORGE NICOLSON of BALCASKY.

THE mutual declarators betwixt the Earl of Kelly, and Sir George Nicolson of Balcasky, the one negative, the other assertory or confessory, were reported. The controversy was, Whether the coal in Balcasky's land of Greendykes, which was a feu of the priory of Pittenweem, belonged to himself, by his feu-charters, or to the Earl of Kelly, as Lord of the erection of that abbacy. The original feu of it, from the prior and convent, in 1533, to Thomas Scot of Abbotshall, bore the coal in the *tenendas*, but not in the dispositive clause; which was thought, by most of the Lords, to give the feuar right to his own coal; seeing it was not specially reserved, though it was not disponed; and that coal may be carried by the clause of part and pertinent. But, seeing thir lands were in the erection of that abbacy to Lord Frederick Stewart, in 1609, expressly with coals and coal-heughs, the Lords found this was a sufficient title, if the Lord of the erection and the Earl of Kelly and his successors have, by the space of 40 years, been in use to work coal up and down the acres of Pittenweem promiscuously, though they did not actually put down coal-sinks in this particular roum of Greendykes: for the Lords found possession in a part gave right to retain possession of the whole.—But, though one feuar might cede his right, why should his negligence wrong another feuar, whose ground was never atttempted to be broken with coal-sinks? The next vote was, Whether the dismembering of Greendykes, and the uniting and annexing it to the barony of Balcasky, by the charter to the Moncriefs in 1623, and its being free for the space of 40 years, from any person's exercising that servitude of working coal in this ground, either by the Earl of Kelly or his authors, did liberate this piece of land, and prescribe an immunity to the heritor. And the Lords, by plurality, found, That it was not relevant to liberate him, unless he had done some positive act,—either of working the coal himself in that ground, or of interrupting and hindering others to work there. Craig is clear, that coal is carried by the general clause of part and pertinent, though not specially disponed; and that it was so decided in his time, between Campbell of Loudon and Chalmers of Gadgirth. But they ANSWERED,—This was in secular feus, but not in ecclesiastic ones, where they could not dilapidate the rental, nor be presumed to give away more than what was expressed. *Vol. I. Page* 606.

1694. *February* 13. CARNEGIE *against* BLAIR of KINFAWNS and the CREDITORS.

THE Lords found, both the heirs of the first and second marriage might be made liable; but that this could not impede the eldest son of the second marriage to establish his debt of £500 sterling, provided to him in his mother's contract of marriage; and though this would constitute him a creditor, yet, when they came to compete for a preference, then it would be time for the creditors to appear and object against his debt. *Vol. I. Page* 607.