Lumsden's debts contracted during the time he was married to the said Robert Chapman's mother; *sed ita est* this was none of them. One question arose, Whether the principal discharge needed to be produced, seeing it was fully narrated in the Sheriff's decreet, and the tenor of it was not controverted by the parties, but only the meaning and interpretation of it. Therefore, the Lords found the obligement of the 400 merks was separate and distinct; and found the letters orderly proceeded: reserving his reduction, when the production should be satisfied, by the principal discharge being produced in the process. *Vol. I. Page* 622.

1694. *June* 29. WALTER SCOT of TUSSILAW *against* JOHN GRIEVE of PINNACLE.

IN the declarator of trust, pursued by Walter Scot of Tussilaw, against John Grieve of Pinnacle, a quaker, that the disposition he gave him of his lands was in trust, and only for his own behoof; the qualifications of the trust were partly founded on some missive letters of Grieve's, and on the smallness of the price; and that the narrative of the disposition does not bear an obligement to pay it, either to Tussilaw or his creditors, but only, that the land shall stand affectable for the creditors' diligence, in so far as may extend to 25,000 merks, &c. Pinnacle opponed the disposition, as simple and absolute, and bearing an onerous cause,—*viz.* the 25,000 merks, the undertaking of 1700 merks of yearly annuity to Tussilaw's grandmother, and the disponing the roum of Easter Pinnacle to Tussilaw, being worth 300 merks yearly; and denied any trust, farther than what ease he should drive Tussilaw's creditors to give him down; that it was to accresce to Tussilaw himself: and that this was all that his letters imported.

The case was intricate; and some were for allowing either party a mutual probation, before answer, as to the grounds inferring trust, or eliding it; but the plurality thought this was to involve them in a labyrinth of trouble and expenses; therefore, they found the trust proven, in regard the disposition could not import a sale, there being no price. And, in law, *emptio et venditio subsistere non potest sine pretio:* and, therefore, reponed Tussilaw to his own right. (But I think this will not extend to rescind a posterior sale of a part of thir lands, made by Pinnacle, with consent of Tussilaw, to Michael Anderson; but only that Pinnacle shall count for the price received, and how far he has expended it in payment to Tussilaw's creditors.) And ordained them to count and reckon; and declared, that Pinnacle should have deduction and allowance of all payments, expenses, and disbursements, on Tussilaw's affairs, together with a consideration for his pains. *Vol. I. Page* 624.

1694. *June* 29. The CREDITORS of SIR ADAM BLAIR of CARBERRY *against* ROBERT DICKSON of SORNBEG.

AN objection was reported against the roup of Sir Adam Blair of Carberry's estate, in favours of Robert Dickson of Sornbeg, as he who offered most for it.

It was OBJECTED, 1*st*. That John Watson, a real creditor by an adjudication, was not called. ANSWERED,—The Act of Parliament 1681 obliges the pursuer of the sale only to call real creditors who are in possession; for he cannot know others: And though there was a factor here, put in by the creditors, or the Lords for their behoof, yet that did not put him in possession; because *non constat* if, in the event of the ranking, he would fall to have any share. The Lords found there was no need of calling him.

2*do*. It was OBJECTED, that some pupils, called Leiths, who were infeft in an annualrent, and in possession, by getting payment of their yearly annualrents, were not cited, by the first diligence, to hear the probation of the rental led, which was the principal part of the process, but only cited on the act; and, even then, that only their father, as administrator, was cited, and not themselves; which was a nullity.

The Lords repelled this objection, and found the infeftment of annualrent, being a servitude, could not properly attain possession; and that the citing the father, as tutor, upon the second diligence, was sufficient, seeing he concurred in the roup: and, at most, the Lords thought the omission of not citing one creditor, could not annul the roup and sale *in totum*, but allenarly *quoad* that creditor's interest; and, if the buyer was content to stand to the bargain, with the hazard of that creditor's debt, the roup was not to be reversed; for they, turning now one of the most solid securities for conveyance of lands, they are not to be loosed nor overturned upon small informalities and omissions.

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1694. *June* 30. SIR JOHN HALL of DUNGLASS *against* SIR WILLIAM SHARP of STONYHILL.

IN Sir John Hall of Dunglass's process with Sir William Sharp of Stonyhill, the question occurred,—If a creditor singly, by warrandice in a disposition, before a distress, may pursue a reduction of a right, on the Act of Parliament 1621, as prejudicial to him, *declaratoria juris*, to take effect when the distress, or eventual eviction, shall exist.

The Lords remembered, that, in Robert Burnet's case, they allowed a cautioner, before distress, to adjudge, lest he should be without year and day; and so they found here he might pursue a reduction *declaratoria juris*. Sir George M'Kenzie, in his commentary on the said act 1621, is also of this opinion.

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1694. *June* 30. The EARL of CASSILLIS, Petitioner.

THE Earl of Cassillis gave in a bill, craving that Tarbet, clerk-register, might be ordained to give him an extract of an Act of Parliament he obtained in July 1690, declaring, that the inhabitants of the bailiary of Carrick, which jurisdiction belonged heritably to him, were not answerable to the Sheriff-courts of Air.

The Lords refused to meddle, or interpose their authority, in commanding