cul is to be followed which hinders it from taking the benefit of the legal. And as to the comprising led in 1673, found it preferable, in so far as it was founded on the avail of the marriage, which is a *debitum fundi*, so as to affect the ward-lands, but no others, with the preference; but found the ward-duties had not that privilege; and therefore that part of the comprising led for them was not preferable, but behind the rest. *Vol. I. Page* 632.

1694. *July* 13. MARION WEIR and her HUSBAND *against* MICHAEL NASMITH.

THE Lords found the testificates and affidavits produced did not fully instruct that her brother was dead; but that they gave so much evidence as to continue her in the possession of the lands, upon her finding caution to refund the maills and duties, if afterwards it appear that her brother is yet alive.
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1694. *July* 13. MARGARET HUNTER and HUSBAND *against* MARGARET HOGGAN, JOHN WARDEN, &c.

SHE, having got a disposition of some tenements from her first husband, with the burden of his debts, she thereon grants bonds of corroboration to some of his creditors. The said Margaret Hoggan, her husband's heir, raises a reduction of her disposition *ex capite lecti*, and obtains a decreet in absence. On this she intents a reduction of the bonds she had given in contemplation of that disposition, *ex causa datorum causa non secuta*. ANSWERED,—We disclaim any such decreet obtained against you. We never pursued such an action, nor gave any warrant to compear for us; and, if a decreet passed, it was your own fault that did not satisfy the production by giving in the disposition. But it is reduced for not-production, without either debate or probation that it was on death-bed; and so the collusion is manifest, that it has been of her own procuring, to give her a ground whereon to quarrel the bonds of corroboration she had given to her husband's creditors.

The Lords found the answer relevant to be proven by the oaths of the pursuers in that process of reduction, and the advocates, that they knew nothing of it, in respect it is without debate or probation; and, if she pleased, she could be yet reponed against that decreet, by production of her husband's disposition to her. *Vol. I. Page* 632.

1694. *July* 13. MR ROBERT HAY of DRONLAW *against* The EARL of STRATHMORE.

THE Lords were convinced that Dronlaw had ground to seek deduction *quoad* the one half of Lyel's comprising, seeing it was paid by the Lord Ramsay, his co-cautioner; but, in regard Dronlaw had referred the promise of payment of

the price and the terms of the bargain to the Earl's oath, and he had sworn that he had paid the whole sums for this debt; therefore they found the oath the sole rule of the bargain, and repelled Dronlaw's allegeance.

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1694. *July* 13. The CREDITORS of FORBES of RIRIS, *viz.* SIR JOHN HALL, SKEEN of HALYARDS, &c. *against* The LADY RIRIS.

THE first question was,—If Sir John Hall had loosed his infeftment of annualrent, by requiring his money, and adjudging therefore. The Lords found that subtilty (which formerly took place with us,) is now exploded, and is no passing from the former. *Second*, There were some of the creditors to whose rights the Lady had consented, and others not: These who had the Lady's consent distressed the other lands wherein she was not infeft, and so excluded the creditors who had not her consent from their annualrents. There was no doubt but they might insist against any part of the lands; but the other creditors debarred offered to pay them, if they would assign them to the right of the Lady's jointure-lands.

A question arose,—If they were obliged to assign; seeing the Lady conveyed them no positive right, but her consent was merely a *non repugnantia*. The Lords desired informations on this point.

The *third* was,—Halyards proved his base infeftment was clothed with possession by holograph discharges, given by him many years ago to Riris, the debtor, of sundry years' annualrents. ALLEGED,—They did not prove the date, and so did not clothe the base right with possession. ANSWERED,—There was nothing more customary than to grant such of annualrents; and they were obtained out of the charter-chest, by a diligence, after Riris's death; and, in fortification thereof, Halyards was willing to depone they were truly of the date they bore.

All which being conjoined, the Lords thought sufficient to sustain them; especially seeing now, by the late Act of Parliament 1693, the difference between base and public infeftments is taken away. If they had been granted by the creditor to the tenants, there would have been less doubt, these not requiring writer's name nor witnesses. *Vol. I. Page* 632.

1694. *July* 13. CATHARINE LAUDER, Lady Balquhilly, *against* MR JAMES ELPHINSTON, WILLIAM GORDON of PANCAITLAND, &c.

CATHARINE Lauder, Lady Balquhilly, against Mr James Elphinston, William Gordon of Pancaitland, &c. anent an aliment to James Mowat, a child, the apparent heir of Balquhilly, from William Gordon, as donatar to his ward. The Lords first burdened the creditors with the expenses of the commission and report of the witnesses for proving of the rental. *2do.* They would not leave the place alternative or indefinite, but named Aberdeen. *3tio.* They ordained Wil-