

was no freight due from Leith to Eyemouth, for what deals, &c. he carried for him ; seeing he was, by the charter-party, to come there however, and take in a loading of corn, that portage being only as ballast. *2do.* That being blown away by storms to Norway, he could not claim the freight, average, nor demurrage.

ANSWERED to the *first*,—*Invecta et illata in navem* are hypothecated in law *pro nauulo*, even without a paction. And to the *second*,—The *vis tempestatis* being *casus improvisus*, without the skipper's fault, he ought not to suffer.

The Lords decerned ; but recommended to the Ordinary to settle them.

*Vol. I. Page 638.*

1694. *July 26.* ROBERT NASMYTH, Bailie of Hamilton, *against* JAMES HAMILTON of AIKENHEAD.

THE Lords found a bond, thus conceived, To a husband and his wife, and to the longest liver of them two, and their heirs, executors, and assignees, did not make the wife fiar of the sum, because she was the longest liver, as was contended, but only liferenter ; for, in all these cases, *potior est conditio masculi*. But it would have been otherwise if it had been to the heirs of the longest liver ; for that termination of heirs would have determined the fee to her, if she had outlived the husband.

*Vol. I. Page 639.*

1694. *July 26.* ELIZABETH PETER *against* PORTERFIELD of FULWOOD.

IT being alleged for Elizabeth Peter, relict of William Montgomery of Mackbyhill, *against* Porterfield of Fulwood, That her consent to his wadset was in her minority, and she had revoked it now ; and, though it was not done *intra annos utiles*, yet it was sufficient, she being then *non valens agere*, because clothed with a husband.

The Lords found, a wife's *quadriennium utile* ran, whether she was married or not in that time ; and that she, not revoking, could not reduce.

*Vol. I. Page 639.*

1694. *July 27.* LORD POLWART *against* SIR JAMES DICK.

MY Lord Polwart *against* Sir James Dick, who refused to take a second term in Polwart's reduction and improbation, because he offered immediately to debate the nullity of Polwart's right, being entered by the king ; whereas Home of North-Berwick was Heugh's superior, these lands not being annexed to the Crown, but expressly reserved out of the act of annexation, (being act 29th, 1587,) where it is disputable whether the superiority, or only the property, be excepted, as Polwart alleged.

The Lords, thinking this debate foreign *hoc loco*, they repelled it *against* the