could not claim a terce of pasturage in a muir which followed these lands; for, though there be no terce of servitudes considered separately by themselves, yet, where they are consequent and conveniencies to adjacent lands, a terce may be sought, even as in a common moss;—even as she would be burdened if the lands of her terce were the *prædium serviens*, so she must have the benefit if it be *prædium dominans*. *Vol. I. Page 655.*

1695. *January* 3. AUCHTERLONY *against* DONALDSONS.

THE Lords thought, in regard the wife was dead, that the clause making her and her husband a bairn of the house did evanish, she having no children, and deceasing before her father; but, if she had survived him, the obligement would have made her so far a creditor to her father, that he could not gratuitously dispose of his moveables, *mortis causa*, to his other children, without leaving her something. But that case did not exist. *Vol. I. Page 655.*

1694. *January* 3. SCOTS *against* AYTON of KINALDIE.

SCOTS, children to Balmount, against Ayton of Kinaldie, for payment of 2000 merks contained in a bond granted by Sir John Ayton, whom Kinaldy represents, to Balmount, on this condition, "if he have a son of the marriage:" and they subsume there was a son born, though he died that same day. ALLEGED,—His once existence purified not the condition, seeing there was another clause, of his out-living the term of Lammas or Martinmas after his birth; which did not fall out: so the bond was as much extinct as if it had been made payable when he arrived at the age of sixteen, and he had never arrived at that age.

Though there was equity for the sisters, as executors, to claim it, yet, in regard of the strict conception of the bond, the Lords resolved to hear it *in præsentia*. *Vol. I. Page 655.*

1695. *January* 4. CRIGHTON of MILHORN *against* MEIK of LEIDCASSIE.

THE Lords thought the feuars of Milhorn preferable. Both the mills belonged of old to the Abbot of Couper; and, when in his hands, he made acts of court, That when they could not be served at Milhorn, by drought or frost, that then they should go to Leidcassie. Afterwards he feus out Milhorn *cum astrictis multuris dominii de Couper tam liberis quam siccis;* and, subsequent to this constitution of thirlage, he feus out also the other mill of Leidcassie, but simply without any astriction to it at all. So the Lords thought the prior acts of court could give no right to Leidcassie; and that their going to it when Milhorn wanted water could not prescribe a right to this second qualified thirlage; and that there was no prescription, there being plain interruptions within the forty years; and, if this were allowed, the thirlage of the first mill might be

wholly evacuated, by keeping up their corns till that accident of the want of water happened: especially seeing the heritor of the second mill had purchased in some of the thirled lands, the first feu-charter bearing dry multures.

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1695. *January* 4. Mr Archibald Nisbet of Carphin *against* William Spence.

Halcraig reported Mr Archibald Nisbet of Carphin, against William Spence, in Orkney. The Lords found, seeing there was a submission and decreet-arbitral between them, whereby Spence's sum of £1000 was restricted to 700 merks, and which was founded on by Mr Archibald, That he could not now crave compensation on articles due by Spence to him preceding that arbitration; unless he would prove, by Spence's oath, that they were not under consideration, nor allowed; because law presumes they were deduced then in the claim, and discounted. It moved also the Lords, in this case, that there was an act extracted in these terms, and which Mr Archibald was now reclaiming against.

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1695. *January* 4. Reynold *against* Erskine of Kirkboddo.

The Lords discovering some probability that the pursuit before the Sheriff of Forfar was to the Earl of Strathmore's behoof, where he was Sheriff-principal, and his natural brother was clerk, and that Kirkboddo had a prejudicial action of reduction of these bonds on concussion, as extorted *per vim et metum*, they advocated the cause; but ordained Kirkboddo summarily to insist in his reduction, and discuss the reasons. *Vol. I. Page 656.*

1695. *January* 4. Mr George Wilson of Plewlands *against* George Dundas of that ilk.

In the mutual declarator of property, between Mr George Wilson of Plewlands and George Dundas of that ilk, anent the right of a loaning, the possession not being of that length that it could give Plewlands a right, they considered the point *in jure;* and found Dundas's disposition to Plewlands, being of the same tenantry, lying on the east and west side of the loaning, it could not include or comprehend the same; because bounding charters cannot comprehend part and pertinent, because all without the bounding is excluded; as was found, 17*th November* 1671, *Young* against *Carmichael:* And this is one of the differences lawyers make between *ager limitatus et arcifinius.* But Plewlands,