

1695. *February 13.* DICK of GRANGE *against* SIR PATRICK NISBET of DEAN.

PHESDO reported Dick, now of Grange, against Sir Patrick Nisbet of Dean. The Lords found the arrestment was *habilis modus* to affect Sir Patrick's backbond to Lewis Dick, not being to retrocess, but to hold count to him, and make payment of what he received, after deduction of his own debt; such a backbond being reachable no other way; and that Sir Patrick was *in mala fide* to transmit his right to my Lord Strathmore, after he had deponed in Grange's action to make forthcoming; and, though Grange had lain off two or three years, yet the arrestment did not prescribe, being pursued within the five years.
Vol. I. Page 669.

1695. *February 13.* THOMAS INGLIS, and CUMMING his Cedent, *against* JAMES DEWAR in Copilaw.

THE Lords found the heritor of Cranston, Sir James Primrose, had no interest, seeing it was not instructed that he had set these eleven acres in controversy to Dewar, and so could not be liable to him in the warrandice. And it being found, after a visitation, that these acres belong to the Cummings' part, by the measuring and valuation of the birley-men, the Lords preferred this to the tutor's act of sederunt, without hearing the parties; and therefore sustained the Commissary's decret.
Vol. I. Page 669.

1695. *February 13.* SIR JOHN HALL of DUNGLASS *against* BARROWMAN and JAMES GORDON of SETON.

THE Lords found, That the defender's comprisings, not being within year and day of Young's comprising in 1681, which was the first effectual one, infestment having passed thereon, though they were within year and day of Sir John Hall's, yet they could not come in *pari passu* with him; because his was reputed in law to be a part of the first; else, if there were a comprising led every year, that connexion would bring in the last equal to the first. And the Lords had formerly decided thus very justly,—*13th December 1672, Street against The Earl of Northesk; 20th February 1679, Tenants of Morton; 7th November 1679, Straiton.*
Vol. I. Page 669.

1694 and 1695. The VISCOUNT of TARBET, and CREDITORS of SINCLAIR of MAY, *against* PROVOST CUTHBERT'S SON.

1694. *July 19.*—In the ranking of the Creditors, it was objected against Cuth-
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