

1695. *November 30.* MARY BANNERMAN, Lady Findrassie, *against* ABRAHAM LESLIE.

ON a petition given in by Mary Bannerman, Lady Findrassie, against Abraham Leslie, her husband's heir, it fell to be debated among the Lords, Whether she could be holden as confest, because she refused to depone in the manner prescribed by law, swearing "by God;" but offering to declare the truth as in the presence of God, according to the custom of the Quakers, of which persuasion she was. It was argued, upon the one hand, That it had been constantly accepted of and received from these sort of people, and it was equivalent to an oath; and it were the persecuting of their conscience to force them otherwise; and it might ruin them if a malicious person raised a claim against them for 10,000 merks, and referred it to their oaths, if they were held as confessed for not swearing what they think prohibited by Christ's law. On the other hand, it was objected, This indulgence was to harden them in their error; and that our Confession of Faith was now a part of our law, being ratified in the Parliament 1690; and by it they were bound to swear: and this might encourage men to believe that, by this course, they might escape perjury; for, if a Quaker should declare what is false, he could not be processed criminally for perjury, because there was no interposition of an oath.

The Lords resolved to consider this case more maturely ere they should come to a decision; but, generally, the pursuers, of consent, allow them to depone in their own manner: So judges are seldom put to determine the precise point, If there be any law or practice permitting it. *Vol. I. Page 681.*

1695. *December 3.* The CREDITORS of SIR JOHN NICOLSON of that ilk *against* The CREDITORS of SIR WILLIAM NICOLSON.

MERSINGTON reported the Creditors of Sir John Nicolson of that ilk against the Creditors of Sir William Nicolson. The first claimed a preference *quoad* the lands of Cockburn's-Path, because Sir John, their debtor, died last vest and seased therein; whereas Sir William was never infest, but only bruiked the same as apparent heir. ANSWERED for Sir William's creditors, That they had supplied the want of his infestment, and done all the law required, by charging Sir William's son to enter heir in special to Sir John, his uncle, and had thereon adjudged; and the act cited gives only a preference for three years.

The Lords found them all in a like case, and brought them in *pari passu*, conform to their diligences. *Vol. I. Page 682.*

1695. *December 5.* GEORGE MACKENZIE of ROSEHAUGH *against* SIR WILLIAM SCOT of HARDEN.

PHILIPHAUGH reported the bill of suspension given in by George Mackenzie