for restitution of the rents of his lands intromitted with by him during his forfeiture, and for the annualrent of the said mails and duties since Martinmas 1688. Of this decreet Parton raises suspension and reduction, on this reason, That, for the mails and duties uplifted by me, I am willing to restore, and have offered them by way of instrument; but, *quoad* their annualrent, there is neither law nor warrant for it, seeing the act rescissory in 1690 has no such provision; and, though libelled at random, yet it was never adverted to by the defender's advocates, and so has passed by mere omission; and the clerk has, in extracting, made the decerniture as broad as the libel.

Answered,—There being other defences proponed in the decreet, your not objecting against this article of annualrent, as well as you debated against the rest of the libel, must bind you; seeing Competent and Omitted can no more loose a decreet *in foro*, by the regulations 1672, than Proponed and Repelled. And, *esto* it were iniquity, and that it was *pars judicis* to have adverted thereto, and not suffered an illegal conclusion to enter into the decreet, yet being omitted to be proponed by the defender's advocate, and noways noticed by the judge, the same cannot be rectified now: seeing the Lords cannot reduce their own decreets upon injustice; but that only belongs to the Parliament. Some urged, it was a nullity in the decreet, and so might very well fall under the Lords' cognizance: but this seemed only to change the names of things, which cannot alter their nature; for the reason truly resolved into the iniquity of the sentence, as contrary to law. And, though the Act 1690, and the 25th Act 1695, allows annualrents for composition of forfeitures, yet there is no law that mails and duties bear annualrent: and though the Lords, in some cases, have modified an equivalent for annualrent, *nomine damni*, yet this was not so done here, but decern for the annualrent itself, without any law.

The Lords were all persuaded the defender had got wrong, but found not themselves empowered to rectify it, else they might, on the same pretence, annul all the decreets *in foro*, which are the great security of the people and their properties. Some argued it was in the Lords' power to redress it; but the plurality carried it *ut supra*. *Durum est, sed ita lex scripta.* See Stair, book 4. tit. 1. anent the authority of the Lords of the Session's decreets; *22d June* 1676, *Irving* against *Ross;* and *30th November* 1678, *Grant and M'Kenzie.*

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1699. *December* 29. Nicolson's Creditors *against* The Town of Edinburgh.

The purchasers of Nicolson having consigned the price in the Town of Edinburgh's hands, who were to keep it till the ranking was closed and the Creditors could exoner the Town and lift their proportion of the money; and, in the meantime, the Town was only to pay three per cent. of interest, by the late Act of Parliament 1695:—the Creditors having charged the Town at Whitsunday last to get up their money, the Magistrates suspend, That they were not *in tuto*, except they had declarations from the buyers that the Creditors had made over to them their rights, and that the Town might be secure. The question arose, as to the half year now run, from Whitsunday to Martinmas 1699, at what rate the Town should pay interest, whether only three per cent. or the full annual-

rent, with deduction of the retention: The Magistrates contending, they being but *consignatarii*, and noways *in mora*, they could be no farther liable than in the terms of the said Act; and not for ordinary annualrent, seeing *per eos non stetit*, that they did not pay at Whitsunday; for these previous questions behoved to be cleared: which is but done this session.

ANSWERED,—After the charge of horning, ye were constituted *in mora;* and it had no qualities, but was simple; and ye should have at least offered to consign the money, which ye did not, but made use of it; which differences the case from a consignation in the Clerk of the Bills' hands.

The Lords found the Town liable for the full annualrent after Whitsunday last. *Vol. II. Page* 76.

1700. *January* 2. MELL *against* JAMES GRAHAM.

MR Mell, the French merchant, gave in his protestation for remeid of law to the Parliament, for absolving James Graham, merchant, from his reduction of the decreet-arbitral pronounced betwixt them; which he quarrelled on this ground, That the arbiters had not cognosced nor noticed his claim: which, being a reason of iniquity, the Lords found themselves not empowered to sustain; because, by the late regulations 1695, no decreet-arbitral may be reduced, save on the head of corruption, bribery, or falsehood: and he contended it was falsehood in the decreet, to bear they had considered his claim, when they had refused to take it in: which is not the falsehood meant by that article of the regulations now turned into a law: which will not exclude nullities, such as the decreet is *ultra vires compromissi*, and the like; for these may be still proponed as formerly. *Vol. II. Page* 77.

1700. *January* 4. SIR ANDREW RAMSAY of WAUGHTON *against* DAVID OGILVIE of POPILHALL.

THERE being mutual declarators of property, as to a piece of ground in Popill, between Sir Andrew Ramsay of Waughton and Mr David Ogilvie of Popilhall, who founded on a decreet-arbitral, by which that ground controverted was, in 1647, adjudged to belong to the said Mr David's father:

ALLEGED for Sir Andrew, 1*mo*. A decreet-arbitral, being only a personal right, can never be obligatory against him, who is a singular successor to John Hepburn of Waughton, the submitter, especially being infeft. 2*do*. The said decreet is prescribed; nothing following on it by the space of forty years.

ANSWERED,—Waughton never claimed more, save a commonty and servitude of pasturage; and therefore his apprisers from him can never be in a better condition, nor crave the property. 2*do*. The prescription was interrupted by the pursuer's minority.

REPLIED,—He having renounced to be heir to his father, and only bruiking