

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 consignment in the Clerk of the Bills' hands.

The Lords found the Town liable for the full annualrent after Whitsunday last.

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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.

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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, *Imo*. 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 infest. *2do*. The said decreet is prescribed ; nothing following on it by the space of forty years.

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

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