Henderson OBJECTED,—That the Bailies had refused to examine on thir interrogatories, If he had not clandestinely conveyed his estate to his lady and children, and other creditors he had compounded with, in defraud of him? and they had unjustly restricted the warrandice of his disposition only to facts and deeds since the decreet, in prejudice of an inhibition he had served on the dependence.

The Lords were sensible the magistrates had generally abused the power given them by that Act, in exorbitant modifications of aliment, and liberating debtors if the same were not paid, and that it deserved to be rectified; but found this complaint came not regularly in, and therefore refused to interpose; but left the Magistrates to proceed as they would be answerable: and if James Henderson found himself lesed by their interlocutors, he had his remedy, by offering an advocation from them. *Vol. II. Page 228.*

1704. *June* 13. JOHN MITCHELSON *against* GEORGE JOLLY.

JOHN Mitchelson, keeper of the register of hornings and inhibitions, gives in a complaint, bearing, That one George Jolly had yesterday come to his office, and craved a sight of their minute-book, which is patent to all the lieges, and had vitiated, scored, and cancelled an inhibition served in April last against his brother; and that he had detained the person to present him to the Lords; who calling for him, and examining him, he confessed he did it, but said it was through ignorance, because they were going to pay the debt of the inhibition, and so might lawfully score it.

The Lords thought the integrity of the records was of great concern to the people's security, and therefore, on his subscribed confession, fined him in 300 merks, and sent him to prison till he paid it, and aye and while the Lords relieved him; and, by the late Act of Parliament 1701, expressed the cause of his imprisonment in the warrant for his commitment: though his simplicity and ignorance pleaded a mitigation; he supposing that, on his design of payment, he might as lawfully score it as they do protestations at the minute-book of the Session, on production of the suspensions. And, for making up the minute-book, the Lords ordained it to be marked on the margin of the place scored, that it was done by mistake of one George Jolly, who had access to the book, and thought he might lawfully do it; and ordained it to be recorded in the end of the book, with his sentence, that all might see such practices would not go unpunished; and for example and terror to others, the advocates and whole lieges attending were called in to the hearing the sentence pronounced against him: And farther declared, the said minute should be as probative and authentic as if it had never been scored. *Vol. II. Page 229.*

1704. *June* 17. WILLIAM MACCULLOCH *against* MACGUFFOCK of RUSCO.

BY contract of marriage betwixt Mr William Macculloch, advocate, and Elizabeth Macguffock, daughter to Rusco, there was 9000 merks tailyied and provided in this manner:—To the said Mr William, and Elizabeth Macguffock his

spouse, and the longest liver of them two, in liferent, and to the bairns procreated of the said marriage; whilk failing, to the said Elizabeth and her children of any subsequent marriage; whilk all failing, then to William Macguffock her father, his heirs and assignees whatsomever. William Macculloch being the only child of this marriage, and both his father and mother being dead, he serves himself heir in general to his father, and charges for the 9000 merks. Rusco suspends, on this reason, That there was no sufficient title in the charger's person to the sum; for, by the conception of the clause of tailyie, the wife was fiar: so that a service as heir to his father, who was only liferenter, cannot establish the right in his person; but he must be likewise served and retoured to the mother.

ANSWERED,—Although the last termination centred in the mother's father and his heirs, that was only conditional, in case there had been no heirs of the marriage; but, *ita est*, he being the only child, he cannot be heir in this sum to his mother, but only to his father. And even where the fee terminates in the wife's heirs, yet the Lords always find, by their tract of decisions, that the husband is fiar, both as the *dignior persona*, and that the sum is provided to the husband's heirs, in the first place, and only to the wife's heirs failing of them, and who only come in as heirs of provision to the husband; as was decided, *12th July* 1671, *Gairns* against *Sandilands and Burn*. See Dury, *29th January* 1639, *Graham* against *Park*; as also Stair, *14th January* 1663, *Begg* against *Nicolson*; and in his Institutes, *lib. 3. tit. 5. sec. 51*; and Dirleton, *voce Substitution in Bonds*; where he is positive that the husband in thir cases is fiar.

Some of the Lords thought it safer that he should likewise serve heir to his mother: but the plurality found it incongruous and unnecessary; and therefore sustained his title as heir to his father, to carry the right of this money.

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1704. *July 23.* COLONEL STEWART of SORBIE *against* WILLIAM AGNEW of CASTLEWIGG.

COLONEL Stewart of Sorbie, brother to the Earl of Galloway, pursues William Agnew of Castlewigg, for the multures of his lands, on this ground:—That, by a bond, his predecessors had thirled his lands to his mill, and obliged himself to pay the thirteenth corn for all oats growing on the said lands, seed and horse corn excepted.

ALLEGED,—Multure is due for service of grinding; but I have no grindable corn growing on my lands, because I have parked it, and turned it into grass; and, by the Act of Parliament 1661, in favour of inclosed grounds, all such lands are declared exempt and free from all manner of burdens; and when he thinks fit to till his land again, he will be liable for the multure, but not till then.

ANSWERED,—The bond bears to have been given for onerous causes, and obliges him to abide thereat, renouncing all exceptions; so no voluntary deed of his can evacuate the thirlage, and render it altogether elusory; and he cannot so change the nature of the ground as to frustrate it totally. Law encourages improvements, but not to the prejudice of others; and, if your land-rent be thereby bettered, you may the more freely pay a consideration for your mul-