transmit a part, why not the whole? But the Lords thought this was an exigence admitting no delay, without wounding the public faith given to the Bank, for making up their loss and damage, and putting a stop to our mint: and the Queen, being informed, has provided no other method for doing of it: and therefore judged they might warrantably proceed. *Vol. II. Page* 441.

1708. *June* 15. JOHN GORDON of GRANGE *against* The EARL of GALLOWAY.

JOHN Gordon of Grange, having borrowed 2000 merks from the Earl, gives him an infeftment in a part of his lands for his security, redeemable always upon payment of the foresaid sum; and the Earl having entered to the whole lands, there is a declarator raised by John Gordon, that the Earl is overpaid by his intromissions, and therefore ought to repossess him, and pay in the balance.

The Earl proponed this defence, That he was debarred and kept out of the possession by a preferable right, granted by this same Grange to the Viscount of Kenmuir, for 2900 merks, whereon infeftment clad with possession followed, prior to the right he made to the Earl: and, for proving thereof, he produced the heritable right granted to Kenmuir, with a seasine and decreet of poinding of the ground.

OBJECTED, 1*mo*,—That right to Kenmuir was never a delivered evident, but consigned in Provost Coltrain's hand, till William Gordon should deliver up to Grange some bonds he had of his; and this appeared by an instrument taken by Kenmuir against Provost Coltrain, and his oath in an exhibition.

ANSWERED,—*Nullo modo relevat* against my Lord Galloway, a singular successor, who now produced the said right in his own hands; and was not concerned in any depositation, which, however it might meet Kenmuir, it can never militate against him.

2*do*, Grange objected,—That, *esto* this were a preferable right, yet, I having put you in possession, you ought not to have quit it, unless removed by a sentence, and legally dispossessed; especially seeing you were obliged, by a clause in the bond, to have defended against that right; and though they would have prevailed, yet you should have bidden a process, ere you had quit the possession.

Which the Lords found, and therefore decerned against the Earl. For though a man is not bound to cast out unnecessary expenses, in opposing a clear uncontroverted right, yet here he had bound himself to it, and was to have allowance of his expenses he should ware out in defending against it.

Vol. II. Page 442.

1708. *June* 18. GEORGE WORSLEY *against* JOHN GRAHAM of REDFORD.

STEWART of Ardvorlich, by a written contract, sells his woods to John Graham of Redford for 300 merks, and gets payment of the price, conform to his discharge. George Worsley, esquire, in the county of Surry, alleging he had bought the woods before, and given a crown of earnest, and two guineas in part

of the price; and had begun his cutting, and furnished horses and mills for the work, and sent one Peter Stranger, a carpenter, to oversee it; but Redford had intruded himself upon the bargain, and seized upon the timber and bark; therefore he raises a process against him, for spuilyie and damages, and executes an inhibition upon the dependance. Redford gives in a bill to the Lords, complaining, That though he had made a fair bargain for these woods, as appears by the contract of vendition produced, and the discharge of the price, at the foot of it, yet he is interrupted by Worsley, whom he knows not. And for Stranger, he offered his service and assistance, and he simply trusted him with 400 load of bark to carry to Ireland, which he never made any account of. And all they say is mere assertions, noways instructed by any writ, whereas he documents all *scripto:* and therefore craves the inhibition may be recalled, and its registration stopped, as both invidious and calumnious.

ANSWERED,—Though his agreement for the woods was only verbal, yet he offered to prove every article of it; and that Redford came in most indiscreetly upon his bargain. And to stop inhibitions were to stop the *vena portæ et cavæ* that conveys the blood through the body politic. And inhibition uses never to be refused, except where a clear discharge is produced, or the libel offered to be redargued by the party executor his oath.

The Lords considered, that bargains for woods of so considerable a value use ever to be in writ, and parties never rely on bare communing thereanent; and that nothing appeared on Worsley's and Stranger's side but bare assertions, without any manner of instruction in writ; therefore they discharged the inhibition as groundless, for any thing yet seen; but allowed them to go on in their process for proving the bargain, and liquidating the damages, as accords, where it will appear whether there was ground for serving the inhibition or not: and the damages may be heightened accordingly.

It seems Ardvorlich has been tampering with them both to screw up the price, and at last settled with Redford. *Vol. II. Page* 444.

1708. *June* 22. JOHN MORISON *against* JOHN HAMILTON.

JOHN Morison obtains a decreet against John Hamilton, writer in Edinburgh, for £40 Scots, before the sheriff. He suspends, That the decreet was in absence, and he only holden as confessed, and no other mean of probation against him but his oath; and therefore craved to be reponed thereto.

ANSWERED,—The decreet was stronger than when one is simply holden as confessed; for it bore a procurator compearing for him, and himself personally present in court, and making faith, so that he might depone in the afternoon; but he contumaciously absenting, and not daring to deny the libel, decreet went out against him. *Et credendum est clerico in actibus officii*, where he asserts he was present.

REPLIED,—The decreet was null; for it bore no day assigned for his deponing: and the decerniture was *ultra petita*,—the libel being alternative, either to deliver back the papers, or pay the sum therein contained; and yet the sheriff most iniquiously decerned him to pay. And for his alleged compearance, the same is false, and is inserted by the procurator's servants on their parole that