

No. 3. 1742, Nov. 13. DRUMMOND *against* MISS CUNNINGHAM.

(THIS case does not appear in the manuscript notes; but the case of Nicholson of Trabrown, 3d February 1738, referred to, is thus mentioned:)—On report of Lord Royston, found that in a process of sale at the instance of an apparent-heir on the act 1695, if upon the sale no reversion remain to the said heir, the expenses of the sale should be proportioned among the creditors, as directed by act of sederunt 1711 in the case of sales of bankrupt estates.

No. 4. 1743, Jan. 19. BUCHANAN *against* GRAHAM.

THE Lords found John Buchanan, the immediate preceding offerer, preferable to Graham the highest offerer, in respect he suffered the three weeks to elapse without finding caution for the price, in terms of the articles of roup; though we all agreed, that were the question only betwixt the seller and buyer, there was sufficient to purge the *mora*, and the penalty not occurred. 22d January, Adhered, and refused a bill without answers.

No. 5. 1744, Jan. 3. HUTCHIESON *against* M'DONALD.

THE Lords determined the general point, that Lord Stair's doubts of p. 128, (133) and found that the *periculum rei venditæ nondum traditæ* lies on the buyer. We adhered to our former interlocutor as to the general point, but ordered the bill to be answered as to the want of evidence that the things was broken, or that the spirits were there.

No. 6. 1747, Nov. 12. MARSHALL and M'KELL *against* BLACKWOOD OF PITTREVIE.

PITTREVIE had, 25th November 1745, written to the pursuers offering them 350 bolls of barley, at half a merk below Lothian fiars, deliverable at Candlemas, payable at Whitsunday and Lammas, they finding security for said price, or in his option to pay him L.6. 6s. at delivery, and expected their answer in a fortnight. December 7, the 12th day, being Saturday, M'Kell came to Pittrevie, bringing with him a letter from Marshall accepting the offer, with a letter from Donaldson, a merchant in Glasgow, to Hunt, attesting Marshall's sufficiency, and desiring Hunt to attest his own. M'Kell and Hunt waited on Pittrevie, and delivered Marshall's letter, and offered Donaldson and Hunt security; but Pittrevie said they came too late, for he had already sold it to one Morris; and then it was after sunset, and Sunday was no lawful day, and Monday was the last day; and he had in fact that afternoon sold it to Morris 2d. per boll cheaper, but it was a bargain for three years, and 30 guineas advanced; and there was also some little speaking about the sufficiency of the security, but very little, and in the end Pittrevie would not give M'Kell the bargain. Marshall and M'Kell sued for damages, in which I pronounced an act before answer; and now on advising the proof, we sustained the action only by the President's casting vote. *Pro* were Minto, Drummore, Strichen, Murkle, *et ego*. *Con.* were Kilkerran, Arniston, Monzie, Tinwald, and Shewalton. Dun was President.