made up of the money received from the pursuer's wife, *sibi imputet* if he become liable in double payment.

The Lords found the libel probable by the defender's oath; and allowed him, if he thought it fit, to have the oath of the third party, whether the bond granted by him to her, was for the same cause; but would not receive it by way of quality, that he had given bond to a third party, at the wife's desire.

Vol. II, Page 702.

1679. *February* 25. The KING'S ADVOCATE *against* The EARL of NITHISDALE.

THE King's advocate pursues a reduction of this Earl of Nithisdale's right of the lands of Duncow, on this reason,—That, by the Act of Annexation, *anno* 1593, the lands of Duncow are annexed to the crown; and, accordingly, the rents thereof have been still counted for in Exchequer.

The defender produced a charter from the king *in anno* 1540, bearing expressly the lands of Duncow to be a part of the earldom of Galloway; which was dissolved, by Act of Parliament, to be set in feu-farm; and, accordingly, was feued to the Earl's predecessor: likeas the Act of Parliament dissolving the same is evident from the Acts of Parliament. The defender doth also produce a progress of the said lands down to himself.

And the Lords having, before answer, ordained either party to produce such evidences as they could anent the possession, it is clear, by the evidences adduced, that the Earl and his predecessors have been in immemorial possession of the said lands, by lifting the maills and duties thereof, by out-putting and inputting tenants; and that there was never an account made in Exchequer thereof, but only of the feu-duty contained in the Earl's charter. And, as to the Act of Parliament 1593, it is a repetition of all the king's property, by several preceding annexations; and though it expresses Duncow in the denomination, which is not expressed in the former annexations, yet, before it was feued, it was a part of the lordship of Galloway, as the Earl's charter from the king bears; which the particular enumeration thereof doth not alter; but Duncow is expressed particularly, because, since the Earl's feu, it is divided from the rest of the lordship of Galloway, and makes a particular *æque*.

It was ANSWERED, That the king hath not, nor can have, a charter for his annexed property, but hath right thereto *jure coronæ:* and, therefore, showing that the lands of Duncow are annexed *in anno* 1593, it is to the king a sufficient right; and nothing but a posterior dissolution and feu can exclude the same.

The defender REPLIED, That an original annexation, expressing the particular manner of the lands coming to the crown by forefaulture, recognition, or otherwise, though done by Act of Parliament, by citation of parties, might be pleaded not to come in under the Act *salvo,* or under the cognizance of the Lords; yet, if this were extended to annexations, repeated by the Act 1593, or other Acts, it would, at one blow, annul all the feus of the king's property in Scotland, they being all therein enumerated, as lordships and baronies annexed to the crown; and, therefore, though they be a part of the king's property, yet that is without exclusion of the feus lawfully made after dissolution in Parliament, as this is prior to the said Act of Parliament.

The Lords found, that the Earl's charter *in anno* 1540, did instruct the lands of Duncow to be a part of the lordship of Galloway; and that, by the prior Act of Parliament, it was dissolved in order to a feu; and that the same was not derogated from by the Act of Parliament 1593, but was a valid right, clad with immemorial possession by him, and the successors of the first vassal; and that the rents were never counted for in Exchequer, but only the Earl's feu-duty: and therefore assoilyied the Earl from the reduction.

Vol. II, Page 702.

1679. *February* 26. JOHN ELPHINGSTOUN *against* The EARL of LOTHIAN.

IN the process at the instance of John Elphingstoun and Balmerino, against the Earl of Lothian, disputed upon the 24th of January last, the Lords, having ordained Cockpen and others to be examined, *ex officio*, how the blank bond in question came in Sir Thomas Nicolson's hand, for what cause, and to what effect: —either party having given in interrogatories, Cockpen desired that he might be allowed to give in his oath in writ, in answer to the interrogatories of both parties, or to have liberty to look upon the paper he had drawn in answer to their interrogatories, in respect of his age, being eighty years.

The Lords refused both these desires, as being a preparative opening a way for prompting and instructing of witnesses how to depone, and hindering the expiscation of the truth.

Vol. II, Page 703.

1679. *November* 28. JOSEPH MARJORYBANKS *against* RANKIN.

BY a minute of contract, Joseph Marjorybanks sells to Rankin the lands of Fields, &c. and obliges himself to give him a sufficient right thereof; and, by a posterior clause, obliges him to deliver the same progress of right that he had from his author, for which Rankin was obliged to pay him such a price. Whereupon Marjorybanks charges for the price. Rankin suspends, and raises a declarator, that the minute should be declared void, for not-performance of Marjorybanks's part, *viz.* delivery of a sufficient right; seeing the progress offered is defective. 1*mo.* Because the apprising of the original right is null, and not subscribed by the messenger, as judge thereto. 2*do.* Marjorybanks's right is by an assignation to the apprising, which assignation is not produced.

It was ANSWERED for Marjorybanks, That he produced the attested double of the assignation, with an infeftment of the land, expressing the assignation; and that he was willing to get the consent of the apparent heir of the cedent, ratifying the right; and was willing to give special warrandice in his other lands. 2*do.* He offered the same progress that he received from his author, conform to the last clause in the minute, which must qualify and restrict the former clause. And as to the apprising, the vestige of the messenger's name remains, and has been but worn out by time; and there is an allowance of the Lords on the back thereof; and a progress, near forty years, thereupon, with possession.