

from the date of the modification. The plurality of the Lords thought, it being due, that it drew back even before its liquidation ; but the President declared he would hear them first in presence, before it should pass into a decision.

There is a case in *Stair*, 4th Dec. 1675, *Watson*, that compensation is only from the liquidation, see *Dury*, 1st Dec. 1626, *Balbegno*.

The next point reported was, whether the relict's *third* intromitted with by the tutor should not bear annualrent from his receiving it, at least half a year thereafter, as minor's money ; the Lords found it had not the benefit of *nummi pupilares*, though it were all lent out in one bond ; and that he was only accountable for annualrent, from the time he should depone that he either lent it out, or traded with it.

As to the third point, against Napier the cautioner, (he being also called,) the Lords decerned against him, seeing the tutor was discussed by a registrate horn-ing, unless he condescended upon a farther estate belonging to the tutor.

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1692. *December 7.* WILLIAM SIBALD *against* SIR ALEX. HOME of Renton.

WILLIAM SIBALD, smith in Renton, against Sir Alexander Home of Renton. The Lords repelled Sir Alexander's reasons of advocacy of the poor man's process of ejection, and remitted it back to the Sheriff ; and found the Baron's jurisdiction not exclusive of his, and that he could not summarily remove the smith from the croft and acres without a warning.

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1692. *December 7.* MACKBRAIR of Netherwood *against* Roome.

[*See Index to the Decisions, M'Brair against Rome.*]

THE case of Mackbrair of Netherwood and Roome was advised, and the Lords adhered to the former interlocutor ; and found Sir Robert Murray might compense his tack-duty with the 10,000 merks, owing by the setter ; and though the minor was lesed, and the tripartite contract not fulfilled, yet he had not revoked *debito tempore* ; but allowed a probation of what was contained in the Mains of Netherwood, and in the lands of Conhentrig, and how far the one was included in the other, and what was the rent of each of them.

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1692. *December 8.* ROBERTSON *against* ROBERT MALLOCH.

IN Baillie Robertson's son's reduction against Robert Malloch, many of the Lords were convinced that it was an exorbitant profit, first to have L.18 per month, for the use of the brewing-ooms, conform to the officer's decret at Leith,

in 1652, then to get 1900 merks as their price, and the said L.18 per month ay till the price was paid, with L.500 Scots of penalty, by the decreet-arbitral; and all this confirmed by a decreet of the Lords in 1657, wherein Malloch deponed, and which was not *debito tempore* sought to be received, as the act of Parliament 1661 provided. And they thought, that after the price was liquidate, no more should have been decerned but the annualrent of it, whereas L.18 per *mensem* was double annualrent; yet the President and the plurality adhered to the decreet, and sustained it for all, even for the penalty, not only in respect of the decreet *in foro*, and that it was *juratum*, but that being a violent and fraudulent intrusion into Malloch's house, and a spulyie of his brewing-loom, it is not enough for the guilty party to offer to pay the price and the ordinary annualrent, but that the rest was justly added *in modum pœnæ*. But a part of the 1900 merks having been paid, the Lords by a vote found that the L.18 per month behoved to suffer a proportional abatement effeiring to the sum paid of the price of 1900 merks.

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1692. *November 30*, and *December 9*. SIR WALTER SETON *against* CORNWALL of Bonhard.

*Nov. 30.*—SIR WALTER SETTON *against* Cornwall of Bonhard. The Lords found the assignation given by old Sir Walter to his son, bearing to all actions and others competent to him, was not restrictive, but extended also to that reduction raised by old Sir Walter, though not specially assigned. And thought that the said Sir Walter's accepting a disposition of the lands with the burden of that bond, containing the said 25,000 merks, was not such a homologation as did cut off Sir Walter from quarrelling that bond, as being the result of an account betwixt them, in which account there were gross and palpable errors. But in regard the bond did not relate to the account, but bore borrowed money, therefore, they found it only probable *scripto et juramento* of Bonhard, that the cause of the bond was a fitted account. And that being proven or acknowledged, then the Lords would consider what should be comprehended under errors; if only errors *in calculo* were to be meant, or even irrelevant and controverted articles; which the Lords thought hard to reconsider after a fitted account, else there should be no *finis litium*.

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*December 9.*—Cornwall of Bonhard *against* Sir Walter Seton, mentioned 3d Nov. last. The Lords found it proven that the bond was the result of an account, because, though the bond bore borrowed money, yet there was an account produced of the same date with the bond, and before the same witnesses, and which at the foot was subscribed, and bore that a bond was then granted for the balance. But having considered the homologations re-iterated since granting of the said bond, they found they were so plain, that they cutted off all quarrelling and review of the said account, upon any pretence, except errors *in calculo*, and summation of the articles and pages. The President urged the forbearing that point, whether he might, notwithstanding of these homologations, be heard *against* relevant, exorbitant, false, or unjust articles. But the generality of the Lords thought