

tirely as a neat sum, and not to have any retention on the account of cess and public burdens ; and, therefore, they found it relevant to be proven by the writer and witnesses of the bond, that it was communed at the time, that he should pay the cess ; seeing, an ease of the rent was given him for that reason. Some were for trying the custom of that country ; because, in some shires, the tenant is bound to relieve the master of the public burdens. But the plurality thought the other the shortest method.

*Vol. I. Page 586.*

1693. *December 29.* CARNEGIE *against* BLAIR of KINFAWNS.

HALCRAIG reported Carnegie against Blair of Kinfauns, his brother of the first marriage. The Lords found the tutory might be produced *cum processu* ; and, if there were none, they could authorise a curator *ad litem*. And as to the second point, having perused the contract of marriage, they found it was not a provision to any heritage, but to a sum of money, and that it run to the heirs or other children of that second marriage ; and, therefore, there was no need of a service ; but that the word *heir* was inserted *designativè*, and meant no more but one who, by his right of blood, might be heir : and therefore sustained his title in this process.

*Vol. I. Page 586.*

1693. *December 29.* ROBERT SANDELANDS, Merchant in Edinburgh, *against* GABRIEL RANKINE of ORCHYARDHEAD.

HALCRAIG reported Robert Sandelands, merchant in Edinburgh, against Gabriel Rankine of Orchardhead. The Lords found, that the offering a progress of writs would not stop his total adjudication of the lands, or restrict the said Robert, his creditor, to a part of the lands, unless he was infest ; and that his ratification would not defend him, because the next heir might pass by him, and serve heir to the former ; and, therefore, decerned the adjudication to be over the haill lands : superseding extract for a month, that, if the defender infest himself betwixt and that time, the adjudication may be restricted to a proportional part, effeiring to his sum, and a fifth part more ; but if not, then to go out against the whole.

*Vol. I. Page 586.*

1693. *December 22 and 29.* DAVID BURNET *against* ROBERT BURNET.

MERSINGTON reported David Burnet, merchant, against Robert Burnet, writer to the signet, his brother. The Lords having balanced the case, whether the payments Robert had made could be ascribed to any other cause of debt than this 3000 merks' bond of provision, (which he quarrelled as null against him, being holograph, and so not probative of its date, and presumed to be made *in lecto* ;) they sustained the ground of the homologation of this bond by the partial payments, though none of them related to this bond, and there were ac-