and contradict the narrative of her own right, which bore expressly for love and favour: and, if her jointure-lands did not pay the foresaid quantity of victual, she might have adjudged thereon; but cannot retain and ascribe this additional right for making up the same. *Vol. I. Page 589.*

1694. *January* 9. The MAGISTRATES of EDINBURGH *against* MR JOHN DUNCAN, Merchant.

PHILLIPHAUGH reported the Magistrates of Edinburgh against Mr John Duncan, merchant, and tacksman of the customs on the wine; who craved an abatement, because of the supervenient law taking it away, and the sterility of the subject, which, by several accidents, had failed. The Lords, observing a clause in his tack, that, in the *first* place, the Town-council should be judges to him, they remitted him to apply to the Magistrates, (though he had taken an instrument against them already renouncing the tack, and offering to count for his intromissions as collector;) but resolved, if they did not settle, to take the cognizance of it to themselves. *Vol. I. Page 589.*

1693 *and* 1694. ELIZABETH FIFE, Relict of MR DAVID GRAY, *against* MR WILLIAM CLERK, Advocate.

1693. *February* 9.—THE Lords found it was *pars contractus* and a *synallagma*; and that Mr David Gray's representatives ought to implement and fulfil to Mr William, as well as he to them: but found *condictio causa data causa non secuta* took not place in this case, so as to free Mr William, on their not delivering to him the grounds and warrants of that apprising; but that this being *factum impræstabile*, in place thereof succeeded *damnum et interesse*: and therefore ordained Mr William to condescend on the damage he sustained through the want of these writs undelivered to him. For the Lords considered that the apprising was led but against a liferentrix; and that, in Buchard's improbation, he had suffered certification to pass, through not producing the comprising and other writs he had in his hands. *Vol. I. Page 557.*

1694. *January* 9.—Philliphaugh reported Elizabeth Fife, relict of Mr David Gray, against Mr William Clerk, advocate, mentioned 9th February 1693. The Lords, having ordained Mr William to condescend on the damage sustained through his not getting up from Mr David the grounds and warrants of Hogan's apprising. And he having accordingly given a condescendence in several particulars, the Lords repelled the same: in regard the comprising was only led against Miller, a liferentrix, and Mr William peaceably bruiked the liferent-lands during her life, (though he ascribed it to the gift of her escheat;) and that he had other comprisings to have defended by, and yet he suffered certification to pass against them.

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