

and then renounce ; or that she grant him a disposition, with a procuratory of resignation *ad remanentiam* ; in his option. *Vol. I. Page 602.*

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1694. *February 6.* The EXECUTORS of GEORGE BROWN of HORN *against* DAVIDSON of BALGAY.

THE Lords repelled the first two objections against the compensation, and found it was materially *inter easdem personas*, and was liquid ; but sustained the last ground urged against the compensation, *viz.* that it was proponed *post sententiam*, contrary to the Act of Parliament 1592, albeit it was proponed in the former decret, and there repelled *illo ordine* ; which the Lords interpreted not to found a compensation in a suspension of that decret, but that it might be free to them to insist in it by way of action. There were likewise sundry nullities proponed against the decret itself, against which the compensation was sought ; such as, that the commission for selling the gloves at Queen's-Bridge, with the confession of the party as to the price he received for them, are only proven by the assertion of the clerk, extractor of the decret, without any other adminicle in write ; and that the BECAUSE of the decret bore, in regard the defender refused to subscribe a submission : but, seeing the Lords repelled the compensation *hoc loco*, there was no need of deciding thir nullities.

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1694. *February 6.* SIR THOMAS STEWART of GAIRNTULLY *against* THOMAS YOUNG.

ANSTRUTHER reported Sir Thomas Stewart of Gairntully's reduction of Thomas Young's decret, liquidating the damage by Gairntully's selling other oak woods during the time theirs was cutting, contrary to a clause in their contract ; and for his taking away sundry of the trees to his own use. The Lords would not loose the decret now, after fifteen years, being in 1679 ; and did not think it a nullity that his oath of calumny was not advised, seeing that does not hinder the party to use another probation ; and though his mandate in away-carrying of the trees was not proven by his oath, (as it was sustained to be so proven by the act of litiscontestation ;) seeing the warrant arose, *ex evidentia facti*, from the testimonies of the witnesses, who proved that the trees were brought to his own house. And the Lords thought it unreasonable to enter upon decreets after so long a time, when Mackonachy (to whom the separate bargain was made,) was now dead.

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1694. *February 6.* GREY of CREICHIE *against* UDNEY of AUCHTERALLAN and SIR RICHARD MAITLAND of PITRICHIE.

THE Lords found, though the father was still alive, and the son a profligate