

*February 17.*—Duke Hamilton's declarator of non-entry, against Hamilton of Bangour, mentioned 7th current, being again reported,—the Lords, as to the first particular, adhered to their former interlocutor, that the offer given to the Duchess, and charge to the Duke, at the pier and shore of Leith, (being then out of the kingdom,) was sufficient to stop the non-entry, though there was no offer nor consignment made when the Duke was charged to receive his vassal. but found, *quoad* the second point, that the bond offered for the year's rent was not valid, being not subscribed at the margins; and is now cancelled; and was a bankrupt: therefore they decerned in the non-entry; and did proceed no farther to examine the other objections made by the Duke against that offer.

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1694. *February 13.*—In Duke Hamilton's declarator of non-entry, against Hamilton of Bangour, mentioned 17th February 1693: in regard the pursuer's advocates would not insist, because the Duke was out of the kingdom; therefore the Lords declared the non-entry should not run against the defender, who was ready to debate *instanter*, till the Duke insisted; for it was hard, by the pursuer's tergiversing, that the defender should still be liable in the maills and duties, if the non-entry should be found: though it was alleged they had another remedy, by offering to enter by a charter, and a year's rent to the Duchess; and how long ordinary remedies were competent, we ought not to recur to extraordinary methods.

But the Lords considered they had offered already; and this new offer might weaken the former, even though done under protestation.

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1694. *February 13.* The MASTER of BALMERINO, and MR HUGH DALRYMPLE, Advocate, *against* SIR JOHN INGLIS of CRAMOND.

THE Master of Balmerino, and Mr Hugh Dalrymple, advocate, against Sir John Inglis of Cramond, in a reduction and improbation of his infetment on North Berwick. The *first* dilator was, That his authors were not called,—*viz.* Sir William Dick's heirs, &c. and the pursuers knowing them, it was a clear No process: yet the Lords allowed them to be cited *cum processu*, to the same diet to which the first term was taken.

*2do.* ALLEGED,—The pursuers' title was not libelled in the beginning, but only in the reason of reduction. The Lords found this informality not sufficient to cast the process; seeing they would be allowed to mend it.

The *third* material dilator was, That he called for the ground and warrant of their decret of poinding the ground, obtained before the Sheriff of Haddington in 1652; whereas it was contended, *1mo.* That the Sheriff and his clerk ought to be cited; *2do.* That, after so long a time, they were only bound to produce the decret itself, but not the libel and executions. And the Lords found so: for the Lords, after twenty or thirty years, will not burden creditors to produce the executions of apprisings, though they have them in their own custody; and much less executions of summonses, which are kept by others.

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