

Lord's chamberlain and doers bade them stay at home, for they should be in no hazard. Though my Lord answered, they had no commission from him, of giving any such assurance; yet the Lords thought, there was much to be indulged to the rusticity of tenants.

*Stio.* The quantities and prices whereon they were holden as confessed, were most exorbitant.

The Lords judged it reasonable to repon them; such duties being oft libelled at random, far above the true values; unless my Lord would consent to discuss the reasons summarily on the bill. But, in either case, modified 100 merks of expenses, to be paid the charger ere they were reponed. *Vol. I. Page 642.*

*November 20.*—In the cause between the Earl of Annandale and French of Frenchland, mentioned 14th current, the Lords finding that the suspender took advantage of his succeeding by a singular title, to shun the payment of those years his father possessed; therefore, to bring him to reason, they refused to loose the decret against him, but referred it to the reporter to settle the parties, so as he might restrict to the true quantities and price of the vicarage, and not as they were exorbitantly libelled at large.

This was to cure one piece of strict law with another as rigorous, and to draw him to reason only. *Vol. I. Page 643.*

1694. *November 21.* JOHN GUILDMAN *against* JOSHUA SMETON, Skipper in Dundee.

THE Lords reponed the skipper against the decret; because, though it bore compearance, yet it mentioned no mandate the procurator had; in which case he could not refer to the pursuer's oath that he had received the bag of spice, seeing it was incumbent on the pursuer to have proven his intromission with it. And what moved the Lords, was, that he had been silent for several months after the entry, and had not intimated to the skipper that he wanted it, and never reclaimed till the skipper was seeking his freight: but found, he might yet prove, that, after the entry of the goods, he required the skipper, by way of instrument, to hold count to him for that bag of pepper; or else, by the skipper's oath, that it was never delivered. For, though the bill of loading did bind it on the master, yet it bore, "quality not known;" and, having delivered the goods in gross, and in cask, it might have been wrapt up therein; and, after he missed it, he should immediately have required it.

Some thought, if the parties had objected it, the bailies of Dundee were not competent judges to such a maritime cause, but only the Court of Admiralty; and others doubted if they could prorogate the jurisdiction by consent.

*Vol. I. Page 644.*

1694. *November 21.* MR ROBERT BENNET, Advocate, Petitioner.

WHITELAW reported a bill of suspension, given in by Mr Robert Bennet, advocate, of a bond, bearing a substitution, failing the charger by death, to an-

other ; and the charger was minor. The Lords found the reason was *jus tertii* to the debtor, and the charger had right to uplift, notwithstanding the said substitution, seeing she was now married. *Vol. I. Page 644.*

1694. *November 23.* MR GEORGE HALIBURTON of INCHCAIRNY *against* DARG and LEVISTON in Dirleton.

THEIR defences were founded on a tack, bearing the receipt of 350 merks, and allowing them to retain the rent of the acre and an half, set in satisfaction of the annualrent. It being OBJECTED the tack was null, as wanting both a definite ish and specific tack-duty, without which no tack could subsist, these being *de essentia* ;—it was ANSWERED, The redemption was the termination, and the annualrent was the tack-duty.

The Lords found it null against the pursuer, who was an appriser, and so a singular successor, whatever it might operate against the granter's heirs. Which was conform to Craig, *tit. de Locationibus* ; and Durie, *31st January 1627, Ross* ; *28th November 1635, Morison* ; and Stair, *15th June 1664, Thomson* ; and *5th February 1680, Rae.* *Vol. I. Page 645.*

1694. *November 23.* JOHN HAMILTON *against* MILLERS, and ALEXANDER HAMILTON of KINKELL.

THE Lords would not restrict the paternal power, if the defenders could assign any rational cause why he passed by his only son of the marriage, and gave him but 2000 merks, whereas he gave one of his daughters 4000 merks ; in so far as, in her contract-matrimonial, he gave 2000 merks ; and, having settled 1700 merks on another daughter, with a power to alter on her death, he bestowed that 1700 merks also on the other daughter.

The Lords not thinking fit to narrow the father's power too much, they divided the 1700 merks between them, and gave the son the half of it ; remembering that, both in Andrew Bruce's case, and Bailie Thomas Wylie's, they had found the father fiar, and stood to the division he had made amongst his children ; and that parents, notwithstanding of provisions and destinations in their first contract of marriage, were not thereby impeded to provide a second wife and children to a moderate provision ; and, though he was heir, yet, being but heir of provision, he was also a creditor. See Stair, *13th February 1677, Fraser.* *Vol. I. Page 645.*

1694. *November 23.* JANET HAMILTON, *against* RAPLOCH, her Brother.

JANET Hamilton, relict of Samuel Winram, pursues Raploch, her brother, for 400 merks, due by her father, conform to bond, whereto she had an assignation. He offers to prove, by her oath, that this debt was paid by her father, and an