his obligements; whereas it did not appear from the process that either there was a term assigned, or a circumduction; and so has been a mistake of the clerk's.—Which make some people compare our decreets to Penelope's web, —what she wrought in the day-time she unravelled it all at night. And it is hard to make people suffer for either the Lords' or clerks' mistakes.

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1695. *January* 1. BALFOUR and STEWART *against* GEORGE ROBERTSON.

PRESMENNAN reported Balfour and Stewart against George Robertson. One is pursuing the apparent heir for constituting his debt *cognitionis causa*, in order to an adjudication; but the term of payment of the debt is not yet come. A co-creditor, who has already adjudged, competes, and contends that he cannot pursue nor adjudge before the term of payment. ANSWERED,—He only craves it *declaratorio juris*, lest he be cast without the year and day, or even without the ten years of the legal, if the liferentrix live so long, whose death is the term of payment: and in arrestments it has been permitted, though the term of payment be not come,—*29th July* 1670, *Charters* against *Neilson*; and *17th July* 1678, *Pitmedden* against *Paterson*: and in *John Hall's case* against *Sir William Sharp*, the Lords sustained his process-declarator even before eviction and distress.

The Lords thought it hard, where the debtor's apparent heir renounced, to suffer a creditor to debar another, though his term of payment was not come, to perfect his diligence on his own peril, adjudications being summary processes; reserving this defence to any competition that may arise in the maills and duties.

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1695. *January* 3. JOHN SCOT, Merchant, *against* SIR GEORGE OGILVIE of NEWGRANGE.

MERSINGTON reported John Scot, Merchant, against Sir George Ogilvie of Newgrange. The Lords sustained an inhibition, though it was objected that its execution was on a paper apart, and not on the back of the letters, and did not design him, but referred to the letters: in regard the Act of Parliament 1672 concerns summonses and not diligences; and that here he was sufficiently designed, by his lands lying within the regality of Aberbrothick; unless they would say there was another of the same name whose lands also lay within the said regality.

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1695. *January* 3. BARBARA LITTLEJOHN *against* WIER of STONEBYRES.

[See the prior part of this Case, *supra*, page 42.]

THE Lords repelled this allegeance, That a relict kenned to a terce of lands

could not claim a terce of pasturage in a muir which followed these lands; for, though there be no terce of servitudes considered separately by themselves, yet, where they are consequent and conveniencies to adjacent lands, a terce may be sought, even as in a common moss;—even as she would be burdened if the lands of her terce were the *prædium serviens*, so she must have the benefit if it be *prædium dominans*. *Vol. I. Page 655.*

1695. *January* 3. AUCHTERLONY *against* DONALDSONS.

THE Lords thought, in regard the wife was dead, that the clause making her and her husband a bairn of the house did evanish, she having no children, and deceasing before her father; but, if she had survived him, the obligement would have made her so far a creditor to her father, that he could not gratuitously dispose of his moveables, *mortis causa*, to his other children, without leaving her something. But that case did not exist. *Vol. I. Page 655.*

1694. *January* 3. SCOTS *against* AYTON of KINALDIE.

SCOTS, children to Balmount, against Ayton of Kinaldie, for payment of 2000 merks contained in a bond granted by Sir John Ayton, whom Kinaldy represents, to Balmount, on this condition, "if he have a son of the marriage:" and they subsume there was a son born, though he died that same day. ALLEGED,—His once existence purified not the condition, seeing there was another clause, of his out-living the term of Lammas or Martinmas after his birth; which did not fall out: so the bond was as much extinct as if it had been made payable when he arrived at the age of sixteen, and he had never arrived at that age.

Though there was equity for the sisters, as executors, to claim it, yet, in regard of the strict conception of the bond, the Lords resolved to hear it *in præsentia*. *Vol. I. Page 655.*

1695. *January* 4. CRIGHTON of MILHORN *against* MEIK of LEIDCASSIE.

THE Lords thought the feuars of Milhorn preferable. Both the mills belonged of old to the Abbot of Couper; and, when in his hands, he made acts of court, That when they could not be served at Milhorn, by drought or frost, that then they should go to Leidcassie. Afterwards he feus out Milhorn *cum astrictis multuris dominii de Couper tam liberis quam siccis;* and, subsequent to this constitution of thirlage, he feus out also the other mill of Leidcassie, but simply without any astriction to it at all. So the Lords thought the prior acts of court could give no right to Leidcassie; and that their going to it when Milhorn wanted water could not prescribe a right to this second qualified thirlage; and that there was no prescription, there being plain interruptions within the forty years; and, if this were allowed, the thirlage of the first mill might be