Foot-guards; and he resolving to do some diligence on it against the Master of Elphingston, gave in the bond to the register. But the clerk observing that the clause of registration run against both, and that Mr Campbell was a member of the British House of Commons, and registration being a decreet, (though of consent,) none could pass against him during the sitting of Parliament; and, therefore, lest they might be charged with breach of privilege, they refused to registrate the same. Whereon, Charters gave in a bill to the Lords, complaining of the clerk, and declared, he craved only an extract against the master of Elphingston, and *pro tempore* past from Mammoir, and craved out his extract with this restriction.

It was argued among the Lords, that the privilege being personal, it could not cover nor protect another not privileged, even as a minor and a major granting a bond, the minor's restitution will not extend to the major; and even so with a wife and her cautioners: and so *de consortibus ejusdem litis.* Others argued, that the two were coprincipals, and the clause of registration one complex individual act, and could not be divided so as to be registrate against one and not against both: and to registrate it simply against one, wanted a warrant. But, *quæritur*, Might he not gratuitously discharge one of the *correi debendi*, and insist against the other; and if the passing from him *pro loco et tempore* may have the same effect in law. *Vol. II. Page* 688.

1711. *December* 19. The MARQUIS of ANNANDALE *against* The TENANTS of KIRCUDBRIGHT.

THERE being a duty of some mart cows, payable out of the parish of Kirkcudbright, to the Marquis of Annandale, as steward thereof, and a fee and emolument due to that office; and the tenants being charged to pay them, they gave in a bill of suspension on thir reasons,—1*mo*, That these kye were due to him as keeper of the Castle of Threave, and for maintenance of the garrison kept there of old, which is now wholly ruinous and decayed; and, *cessante causa*, the duty must cease.

ANSWERED,—This is a fee and emolument due to the heritable stewards of Kirkcudbright, whereof they have been in possession past memory of man: and it is of no import whether the castle be standing or demolished; for, though these castle-wards and constable fees were originally due for securing the peace of the country, and to defray the King's expense at table, when he came in circuit through the several shires, yet now they are become a part of the subject's property: and the same objection having been made against some kains and casualties payable to the Castle of Lochmaben, now ruinous, it was repelled.

2*do*, ALLEGED,—Their masters held their lands blench of the Queen, *pro omni alio onere*, and so thir lands cannot be burdened with this duty.

ANSWERED,—Though it be not in your charters, yet it is in mine, and confirmed by immemorial possession.

The *third* reason was, The manner of exaction is most illegal and abusive; for officers come, exacting crowns and half-crowns of some, and burdening others.

ANSWERED,—The complaint is calumnious; for the way of uplifting is, that, at the Michaelmas head-court, intimation is made judicially, that they may

meet and stent themselves in their proportions, and bring them in to the steward. *2do*, If there were any extortion, let them complain to the judge competent, and they'll be punished according to law.

The Lords, in respect of the possession, (which was not denied,) refused the bill, reserving to them to get the way of uplifting it better regulated. If the possession had been controverted, the Lords would certainly have passed the bill, to the effect it might be proven; but there was no use for it here, the possession not being denied. *Vol. II. Page* 688.

1711. *December* 20. SIR DAVID DALRYMPLE *against* The EARL of CARNWATH.

The Viscount of Kingston, as proprietor of the barony of Hailles, pursues a reduction and improbation against the vassals of that lordship; and, particularly, calls Sir John Dalzell of Glennay, for his lands of Kirkmichael; and, after the terms are run, obtains a certification; for stopping whereof he made a partial production. The process having slept for many years, it is at last wakened by Sir David Dalrymple, last purchaser of these lands; and craving out his certification against the Earl of Carnwath, as representing his grandfather, in respect the writs then produced were taken up again; it was ALLEGED,—No certification; for your title is prescribed, in so far as you had taken no document on it for forty years preceding Kingston's citation; and so, by the Act of King James III. it was lost *non utendo*, by the negative prescription. ANSWERED,—Not competent *hoc loco;* but it should have been proponed *in initio litis*: all objections against the title must be before the taking of terms. Neither is *res integra*, the production being taken up; and, till these be again in the field, I will not debate my title. You must first put me *in statu quo*.

2do, ALLEGED,—Your summons is expired; not being renewed every seven years, according to the Acts of Parliament 1669 and 1685. ANSWERED,—These citations for interruption are only required where a process is raised and not insisted in; but here it was brought the length of a certification; after which it lasts forty years, without necessity of a septennial renovation.

The *3d* defence was,—That your author, Stewart, Earl of Bothwell, had no more by his gift of the Hepburns' forfeiture but the lands holding feu, and redeemable; of which kind Carnwath's lands were not. ANSWERED,—This restriction is taken off by a posterior charter in ample and comprehensive form.

4to, ALLEGED,—Your seasine is null *quoad* my lands in Dumfries-shire; because neither registrate in the general register nor in the particular one where the lands lie, as the Act of Parliament 1617, anent registration of seasines, requires. ANSWERED,—The haill lands being united in the barony of Hailles, and a seasine taken at the castle and messuage thereof, lying in East Lothian, being declared to serve for the whole, it was sufficient to register in the books of that shire.

REPLIED,—We must distinguish betwixt the taking of the seasine and the registrating of it; for, though the seasine, by the union, comprehends all, yet there is no such indulgence for the registration: such fictions of law are not to be extended. And by what rule can a purchaser of lands in Dumfries be ob-