1764. *December* 18. DOUGALSTON *against* HUGH STEWART.

HUGH Stewart was employed by two other gentlemen to purchase a parcel of land for the behoof of all three in company. The seller was not ready to clear incumbrances for many years after the purchase. Notwithstanding, Mr Hugh Stewart paid him the price by partial payments; and when he came to clear with him, the account was stated in the progressive way, that is, deducing the several payments from the interest due at the time they were made, and not in the bank or mercantile way, by which the partial payments are deduced from the principal sum, and the interest is kept by itself, summed up at the time of the clearing, and added to the balance of the principal sum then due. The partners objected, that he ought to have cleared in this last way, by which a much less balance would have been brought out against them, and the seller could not have refused to have accounted in that way, as it was his own fault that the accounts were not sooner cleared; and therefore he must blame himself that his interests lay over so long unpaid. But the Lords found, unanimously, that, as Mr Stewart was acting for himself as well as for his partners, and consequently was liable only to the *actio pro socio*, and as there was equity that the seller should not want his interest so long, especially as the purchaser was in possession of the lands, the rents of which are understood to answer to the interest of the price, therefore he was not bound to pay the difference betwixt the two methods of accounting out of his own pocket.

1764. *December* 20. M'QUEEN *against* ———.

IN this case the Court found that the old Act of James I., appointing a lawyer to take an oath of calumny, was obsolete; and therefore they found that Mr M'Queen, in this case, was not obliged to swear, *in jure*, that he thought his client had a good cause.

1765. *February* 5. STEWART *against* BISSET.

FOUND that a bargain of land was not concluded by missive letters, because the missive of the seller was not holograph, though the letter of the buyer was holograph, and there was afterwards a letter from the seller, holograph, agreeing to stand to the bargain, upon condition of an additional price, and subsequent to that letter there were letters from the buyer, likewise holograph, agreeing to give that additional price. What the Lords went upon, seemed to be, that there was still *locus pœnitentiæ* in a bargain of lands till a formal deed was extended.