

delivery of eight last of salmon yearly, towards paying him £10,000 Scots, which he had lent Cromarty, for whom Brodie had become cautioner; the price of each barrel being £16, and the price of each undelivered barrel liquidated to 40 merks; with annualrent from Martinmas, which was the time of the delivery:—the reason of suspension was, That this was truly *mutuum*, being the loan of £10,000 Scots; and therefore, his just interest resolves into principal and annualrent, and he cannot claim farther.

ANSWERED,—This is truly a mercatorian bargain; and so he must not only have his *damnum emergens*, but his *lucrum cessans*, and he had suffered in both; for, by their failing to deliver the salmon, he, being engaged to others on the faith of this contract, was forced to furnish himself at a dear rate.

The Lords, on Boyne's report, modified, for every undelivered barrel, £4 Scots more than the £16 which was the price liquidated for delivered barrels, and likewise decerned for the annualrents of these undelivered barrels.

But, on the 19th of March, on the King's Advocate's application, the Lords altered their former interlocutor, and found the contract is *principaliter* an obligation for principal sum and annualrent; and that the salmon is only adjected as the *modus solutionis*, and for his better security; and therefore decern only for the principal sum and annualrents, and assoilyied from the failyies of the undelivered fish, because the annualrent succeeds here as damage and interest, *loco facti imprestabilis*.

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1685. JAMES GORDON, Parson of Banchorie, *against* SIR ALEXANDER BANNERMAN of ELSICK.

February 24.—MR James Gordon, parson of Banchorie, pursues a reduction of a decret *in foro*, obtained against him by Sir Alexander Bannerman of Elsick; finding that Sir Alexander had the sole right of property and pasturage in the Hair-moss, by virtue of his lands of Cuckston, and that Mr James and his tenants of Airdoch had no right; which was carried by the late Chancellor's moyen.

The reasons of reduction were,—1^{mo}, The decret was *ultra petita*; for Elsick's summons craved but common pasturage; and there being more given him on the Lord's advising, they cutted the summons and scroll of the Act, and interlined the Bruntland beside the Cowford, to make it meet the decret. 2^{do}, Mr James had produced a decret of perambulation in 1630; and yet it was not considered. 3^{tio}, The decret proceeded only upon half advising, and half probation, *viz.* only of Elsick's witnesses, and not of Mr James's; and only one of them was positive; and yet he deponed he saw them in possession of casting of peats, when, by calculation, it appeared he was then but five years old.

The Lords, having advised the debate, before answer, ordained the summons and acts to be produced; and remitted to the Ordinary upon the witnesses, to take the oaths of Mr George Bannerman, Alexander Deuchar, agent, and the extractor, or any others whom the pursuer shall condescend upon, anent the

alteration of the libel, and when it was ; if, after litiscontestation, or after sentence, and upon any other pertinent interrogatories to be given in by either party. *Vide* 6th March 1685. *Vol. I. Page 343.*

March 6.—The case of the Parson of Banchorie against Elsie, mentioned 24th February 1685, was advised. The Lords found, by the deposition of Alexander Deuchar, That the summons and act have been altered, vitiated, and interlined ; and the words, “ Muir and Moss” added : and therefore they loosed Elsie’s decreet, and appointed Boyne, Kemnay, and Carse, to visit the ground, and to take all cognition they think fit, by witnesses, &c. anent the property or commony therein, and to report betwixt and the 1st of November ; and, in the mean time, to endeavour to settle the parties. Mr James Gordon, on a bill, got Drumcairn added. *Vol. I. Page 350.*

1685. JOHN GRAY of CRIGIE *against* The EARL of LAUDERDALE.

February 21.—GRAY of Crigie gives in a bill against the Earl of Lauderdale, craving, in regard he would not produce the disposition called for, but suffered certification to pass against it ; that therefore the Lords would examine his witnesses on Lauderdale’s deeds of concussion and oppression, in dispossessing the Lord Gray, his author, out of Benby, and other lands, without a right, to lie *in retentis, ad futuram rei memoriam.*

The Lords ordained them to be received, he condescending on them.

Then Crigie gave in a new bill, craving liberty to add extrinsic grounds of Lauderdale’s concussing others, as he had done against my Lord Aberdeen ; *et quod quisque juris in alium statuerit, æquum est ut ipse eodem utatur.* *Vide* 6th March 1685. *Vol. I. Page 343.*

March 6.—John Gray of Crigie’s reduction against Lord Lauderdale, on concussion, mentioned 24th February 1685, is reported by the Register ; and the Lords gave just the like interlocutor here as they gave in Lord Lauderdale’s reduction against Aberdeen, allowing a conjunct probation : Crigie, to prove the dispossessing him, and keeping up his papers till he ended ; and Lauderdale, to prove that he entered by virtue of a right, and gave an adequate price. *Vol. I. Page 350.*

1684 and 1685. The ADMINISTRATORS of HERIOT’S HOSPITAL *against* SINCLAIR and STEVENSON.

1684. *February 5.*—THE Magistrates and Ministers of Edinburgh, as administrators of Heriot’s Hospital, pursue a reduction of a tack set by them, in 1678, to Sinclair and Stevenson, of the Canon-mills, as done by private contrivance, and to the lesion of the Hospital ; (who enjoy the privilege of minors ;) it being set for 2300 merks for nineteen years, whereas 1000 merks more yearly was offered ; and it was set in sundry particulars contrary to the statutes of that Hospital : and though it was answered, that the tacksman was