

*quoad non executata*, albeit the executor was but a stranger and had not *jus sanguinis*.

*Act.* Wallace.

*Alt.* Lockhart.

*Advocates' MS. folio 56.*

1666. *November 10.* ARCHBISHOP OF ST. ANDROIS *against* His TACKSMEN.

IN this case found, That the act of Parliament declaring all valuations and decreets of Plat null, deduced since the 1637, did put the intromitters with the teinds *in mala fide* to pay to any other, albeit they paid by virtue of a sentence.

*Act.* Sinclar.

*Alt.* Beton.

*Advocates' MS. folio 56.*

1666. *December 20.* HAY of Knockhoudie *against* JOHN LITTLEJOHN.

JOHN LITTLEJOHN, merchant in Edinburgh, having comprised the liferent of a tenement in Leith, which being ruinous did thereafter fall; by which another tenement lying adjacent, belonging to Hay of Knockhoudie, was damnified in the sum of three or four hundred merks; after trial by the Dean of Guild and Council of Edinburgh, being found to be no less; for which Knockhoudie raises summons for payment of that sum, as the damage and interest sustained by him through the fall of his house.

ALLEGED, That he having comprised but the liferent of that house, his right was but temporary, and the heritor only could be convened to pay the sum acclaimed.

The Lords found the compriser of the liferent liable for this damage, reserving action to him against the heritor and liferenter for his relief.

*Act.* Norvell.

*Alt.* Lockhart.

*Advocates' MS. folio 56.*

[See the conclusion of this case, *infra*, page 441.]

1666. *December 20.* LYELL *against* BRAND.

LYELL, a chapman, having deposited his pack *custodiæ causa* with Brand, a merchant in Dundee, from whom he also borrowed L.5 Sterling: and Brand, after the chapman's absence by the space of a month, having by warrant of a bailie opened the pack and inventoried the same, but without any sentence recovered against the chapman for payment of the L.5; and being pursued for spulvie of the pack, he ALLEGED, That the chapman being his debtor, he did only sight the pack, to see what he had for his money, but noways alleged the pack was impignorat to him for his security; and being done *authore prætoris*, it ought to