

1692. *November 30.* HILL *against* CUTHBERTSON and GARDNER.

HILL in Queensferry *against* Cuthbertson and Gardner. The Lords found the act wrong in assigning a day to the tenants to depone *ut constet de debito*, before the defences upon the interest of parties were discussed; and that the certification against the bond, (which was the ground of the apprising on which the mails and duties were craved,) was only in the terms of a naked reduction of cassing and annulling, though improbation was also libelled in the summons, though the clerk at extracting had omitted that part in the certification *contra non producta*, to declare them false and feigned; and, therefore, the Lords found they ought to be reponed yet against that certification, on producing the bond, and paying the expenses. But a new point occurred to the Lords, that this bond, not produced, was not the principal bond, but a decret making up its tenor, to which thir parties were not called; and, therefore, allowed them yet to be heard as *in libello* why the tenor of the said bond was not proven, as also against the relevancy, ad-minicles, *casus amissionis*, and probation. *Vol. I. page 524.*

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1692. *November 30.* FLETCHER of Benscho *against* CARNEG Y of Phineven.

FLETCHER of Benscho *against* Carnegy of Phineven. The Lords found, where there was a conjunct probation granted, any of the parties might renounce farther probation, but could not make *avisandum* with his own probation, till he had circumduced the term against the other; and if he had a running diligence by caption against witnesses, that the term could not be circumduced against him, unless he had restricted himself to a set number of witnesses, and had examined that number, as was alleged in this cause. *Vol. I. page 524.*

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1692. *November 30.* ISOBELL DUNDASS and ROBERT CUNNINGHAM *against* The EARL OF MARSHALL.

PHESDO reported the case of Isobell Dundass and Mr. Robert Cunningham, her husband, against the Earl of Marshall.

ALLEGED,—Though the putting a general and special declarator into one summons be a sustainable *accumulatio actionum, ad abbreviationem et compendium litis*; yet there being a decret extracted in the general, they must have the process given out to them to see in common form, and it must be returned and inrolled *quoad* the special, ere they can be obliged to answer to it.

REPLIED,—They have seen and returned it already *quoad* both, and they can have no more sight.

The Lords found, they could not crave it in common form, but might see in the clerk's hands, and enrol it in the next week's roll. *Vol. I. page 524.*