

1693. *February 24.* WHITE and CARMICHAEL, Executors-Creditors to BAILIE ARBUTHNOT, in Dundee, *against* ALEXANDER COWAN, there.

THE Lords thought that part of his oath, whereby he swore he was a partner in the bargain of victual with Bailie Arbuthnot, would have been an intrinsic quality, and would have needed no other probation, had there not been a prior declaration that this victual belonged to the said Bailie, which was cancelled, and that the inventory made by the tutors of Bailie Arbuthnot's children bore he acknowledged so much thereby; and so they ordained him to be examined, *ex officio*, upon the tenor of the said declaration, whereof there was an attested double yet extant.

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1693. *February 24.* LORD NEIL CAMPBELL'S RELICT, CHILDREN, and CREDITORS, *against* MR ARCHIBALD CAMPBELL, the Eldest Son.

THE relict, children, and creditors of the Lord Neil Campbell, against Mr Archibald Campbell, the eldest son: during whose absence out of the kingdom the Lords had named a factor to uplift the rents; and he, not only as apparent heir, but as going presently to serve heir, craved it might be recalled, and he admitted to the possession of his own estate, and offered to find the Earl of Broadalbane cautioner. On the one hand, it was urged, that the defunct's possession, *ipso momento* continued upon and passed to his heir; and though there was a factor named in his absence, yet, whenever he claimed his right, he behoved to be repossessed, by the principles of law. On the other side, the creditors being now in possession, it was hard to turn them out; especially it being a Highland interest, where they could not so easily recover the possession. Therefore the Lords struck a middle course, and refused the offer of Broadalbane as cautioner; he having stated himself already as their party, and being *potentior adversarius, et difficilis conventionis*; and that the factor should continue till they found some Lowland caution that will be more accessible to the creditors.

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1693. *February 24.* ELLIOT of PHILP *against* CHISHOLMES.

The Lords sustained the order of redemption, notwithstanding the nullities objected against it; and found it an odious design to carry away the irredeemable right of the land.

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1693. *February 24.* LADY BILLY, Petitioner.

THE Lords, on a bill, modified to the Lady Billy 800 merks of aliment for

this last year, in regard there were pregnant presumptions of her husband's death abroad, though she could not clearly prove it; in which case she would have access to her jointure.

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1693. *January 25; and Feb. 4 and 28.* The EARL of HADDINGTON and his TUTORS *against* THOMAS CAMPBELL, Deacon of the Fleshers in Edinburgh.

[See the first part of this Case, *supra*, page 55.]

*February 24.*—The Earl of Haddington and his Curators, against Thomas Campbell, about his removing from the park of Holyroodhouse.—The Lords thought his oath did not prove any overgiving, nor yet any homologation of the placard and new tack set to Alexander Ramsay; and, therefore, were ready to have assoilyied; but referred it to some, to try if he would remove at Whitsunday, (but then he would overlay the grass till that time,) or that Ramsay would buy his stocking of sheep, &c. he had grazing in the park. But the President and severals thought that an overgiving was not sufficient without a renunciation in writ, and that the tenant might resile, or the master not accept it till then. But within burghs there are no such renunciations.

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*February 28.*—The Lords advised Deacon Thomas Campbell's bill of suspension, against the Earl of Haddington and his Tutors, anent his removal from the King's Park, mentioned 24th current. And the Lords having read his oath, by plurality they found he could not be removed, unless either he had been warned forty days before the term, or else had given a renunciation of his tack in writ under his hand: albeit he acknowledged he had declared that he would not keep it unless he got an ease of the rent, and knew of the placards affixed for a new set; and that, the tack being expired, and he only now bruing *per tacitam relocationem*, there was no need of a formal renunciation in writ; and that it was evident that he acted fraudulently, at least craftily, to get down his tack-duty.

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1693. *November 3.* GRAHAME *against* AUCHTERLONY.

ON a petition given in by Grahame, against Auchterlony, in Montrose, the Lords found a man (though eighty-six years old,) might give a discharge of a debt, though they had a ground of compensation against it; seeing it was not applied, and that compensation, unless sought, did not hinder uplifting; and modified £25 of expenses, (the whole debt in the bond being about £50,) but included the penalty of the bond therein.

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