

1693. *December 22; and December 27.* JAMES FITHIE'S CHILDREN *against* The EARL OF NORTHESK.

LORD Rankeiler reported some objections against Mr George Johnston, minister at Saline, why he should not be admitted a witness in the cause pursued by Mr James Fithie's children against the Earl of Northesk, about the taking a bond out of the charter-chest, and delivering it up. The objections were: That he was uncle to the children; that he had come ultroneously, at least his citation was after the day in the diligence; that he had betrayed his testimony, by writing a letter, containing what he could say in the cause; and that he had a *cessio bonorum*, or general suspension, against all his creditors. Some urged that he might be taken *cum nota*; seeing, in such clandestine conveyances as this, domestic servants, and witnesses otherwise inhabile, were receivable. But the Lords, before answer, ordained the *bonorum* and the letter to be produced.

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*December 27.*—The Lords having heard the debate, on the objections stated *supra*, 22d current, against Mr George Johnston, as a witness; they found there was no ground to receive him: yet, seeing there was nothing of a transaction proven, between the tutors and Northesk, whereby the bond is alleged to have been delivered up to him, for some small gratuity and consideration; therefore they superseded to declare whether they would receive him or not, till there were farther evidences of the breaking up of the cabinet, and taking out this bond, and giving it to Northesk.

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1693. *December 29.* BROWN *against* The LADY GIRVANMAYNS.

LORD Whitelaw, probationer, reported Brown against the Lady Girvanmayns, about the nullities of a horning, whereon a declarator was craved by him, as donatar to the escheat.

The Lords laid most weight on this, That the extract produced out of the register, bore but one witness to the denunciation; whereas the principal horning, marked, registered, and produced, had two witnesses; and which of the two was to be most credited? In the parallel case of a seasine, the extract is probative by the Act of Parliament 1686. But here the Lords, before answer, ordained the Sheriff of Ayr to inspect the register there, and report how it stood recorded in the books.

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1693. *December 29.* WILLIAM GORDON *against* THOMSON and GORDON.

CROCERIG reported William Gordon, in Buchlaw, against Thomson, and Gordon his assignee. The Lords considered the tack was null, wanting a tack-duty; and though the bonds did not relate to the tack, yet, being of the same date, and an obligation for victual, it was for the duty of the lands set in the tack; and that the taking a bond apart, presumed that he was to pay that en-