

1694. *February 9.* LADY KIRKLAND *against* The CREDITORS of ST GERMAINS.

NEWBYTH reported the Lady Kirkland, and the Creditors of St Germain's, about the factory. The creditors offering one Blair,—the Lords preferred her, in regard she was content to serve *gratis*, and to aliment the heir, and that she was a considerable creditor on that estate; though some thought it a reason why she ought not to have been received, but a third party that was neutral and indifferent.

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1694. *February 9.* LORD NAPIER'S TUTORS *against* His CURATORS.

IN the debate between the tutors and curators of the late Lord Napier, Which of them should be found liable for the rents of the year when the tutory ceased and the curators entered on their office; (for, though they be both liable to the minor, yet the question was, Which of them were bound to relieve the other :) The Lords found the curators liable, unless they had done diligence against the tutors to call them to an account, as also against the tenants; and found the curators liable for what was in the tenants' hands unlifted at their entry, but not for what the tutors had drawn precepts on the tenants for, and which the tenants had accepted; for the Lords esteemed that equivalent to payment: though the President said the curators should also be liable for it.

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1694. *February 9.* The DUKE of QUEENSBERRY, &c. *against* The CREDITORS of MENZIES of ENOCH.

ARNISTON reported the competition between the Duke of Queensberry, and Lieutenant-colonel Douglas, and the other Creditors of Menzies of Enoch, who quarrelled the adjudication which the Duke had acquired from Williamson of Hutchingfield, as null, because he had adjudged for some years' annualrents paid to his father, and also for some years paid to himself. The Lords thought the annualrents paid to his father could import no nullity, but only to restrict: but it was considered to be of pernicious consequence to sustain diligence led for more than was due, when a great part was paid to the adjudger himself; for there was a tract of decisions finding apprisings and other diligences null on that head. See *23d November 1677, Boyd*; *20th July 1678, Morris*; and *31st January 1679, Irvine*. And, in the common law, *pluris petitio* was reputed so calumnious a fraud that *causâ cadebant*. So that the Lords would have annulled this adjudication here, had they not fixed on a slender homologation, that the other adjudgers had acknowledged his right, by taking a proportion of the expenses in expeding their infestment on the adjudication: and, on this reason, they only restricted it to the principal sum and annualrents.

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