

4to. ALLEGED,—He could not be liable; because he offered to prove that Strathallan was employed by Torwoodley, as his trustee, to make the transaction, and he did it with his consent allenary. This the Lords found relevant, at least to cause Torwoodley recur against Perth, the receiver of the composition. But the question arose anent the manner how it was to be proven? ALLEGED,—Trust might be proven by adminicles, presumptions, and circumstances. But, in regard they did not condescend on them, the Lords found it probable only *scripto vel juramento*; and, if they elected Torwoodley's oath, they would allow the commoners to be confronted with him: but would not put them presently to make their election; in regard their advocates and Blair Drummond gave their oath of calumny that they had reason to propone the said allegiance, without which the Lords would not have sustained it; seeing Strathallan, the party, was not present to give it. And thus it was, after a great struggle, delayed till June, which the defender was mainly seeking; and was complained of by some as evacuating the late Act of Parliament, ordaining all these actions to be summarily discussed. But it could not be the meaning of summary discussing, to exclude defences or diets to prove them, but only to dispense with the abiding the course of the roll and these other dilators in form. On the 23d of June 1694 Strathallan gave in his protest for remeid of law against Torwoodley's decret.

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1694. *February 27.* LOCKHART of LEE *against* LOCKHARTS of CASTLEHILL and CARNWATH.

CROMWELL Lockhart, the last Laird of Lee, having made a strict tailyie of his estate, wherein he prefers the daughters of Castlehill and Carnwath, his two uncles, before his brother Richard, his daughters, &c.; Castlehill, and the other substitutes in the tailyie, presented it to the Lords, with a bill, craving it might be recorded in their books, conform to the Act of Parliament 1685. The present Lee considering that this would instantly bind up his hands from contracting debt, or providing a greater jointure to a wife than the tailyie allowed, he opposed the registration, and craved to be heard. Several of the Lords thought this interposition would not stop the recording; but the plurality craved he should be first heard.

This will not secure him; for, though the recording be stopped till June, what hinders them to serve an inhibition on it *medio tempore*?

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1694. *February 28.* JOHN TROTTER, Supplicant.

JOHN Trotter, being condemned to die for treasonably supplying the Bass,

gave in a bill, representing, That, in his absence, when he durst not appear, he was holden as confessed, at Bailie Thomas Young's instance, for 10,000 merks, for not deponing; and desired now to be reponed to his oath, that the said debt might not affect his estate, though this was more the King's concern, who succeeded him, than his heirs'. The Lords thought this not the habile way; but allowed him to give in a bill of suspension, when his case might be considered;—only the difficulty there is, that the Ordinary, in the vacance, cannot take his oath. *Queritur*, If this offer should exoner him of the former circumduction holding him as confessed.

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1693 and 1694. The LORDS of SESSION *against* The TOWN of EDINBURGH.

1693. November 1.—GEORGE Falconer, one of the two keepers of the Parliament-House, having died during the vacance,—Alexander Livingston procures an act of the Town-Council of Edinburgh, presenting him to that place,—they ALLEGING, the House being theirs, and they paying fifty merks of salary, and all reparations and other expenses, it was but reasonable they should name the servants, at least that they have the presentation of one of them. It was ALLEGED for the Lords, That the Town might as well plead the in-putting of servants to keep the Privy-Council and Exchequer-rooms; and that the greatest part of the emoluments arise from the Lords and Advocates, and others depending on the College of Justice.

The Lords referred it to the President, to confer with the Magistrates of Edinburgh, and to report. And the result of their first meeting was to search the records of the Session and Town in times bygone, and see who had been in use and possession of placing them, either when it was in a single person or in two; and then to consider what should be so produced and found.

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1694. June 4.—The Lords of Session and the Town of Edinburgh came at last to an accommodation about choosing a housekeeper in place of George Falconer, deceased; that, seeing there were always to be two, they should present them *per vices*. And in regard Mr Kennedy, the last entrant, came in by the Lords' nomination, that the Town-Council should now give in a list of three to the Lords, out of which the Lords would choose one; and, on the next vacancy, the Lords should present three to the Town, out of which they should elect one; and so *per vices*, as oft as it occurred. And thir two cautions were adjected: 1st. That all presented in the lists should be burgesses; though some of the Lords urged they might have freedom in their lists to name decayed members of the College of Justice; but it was thought such were either burgesses, or could be made so. 2d. That the presentation and election should not be procrastinated, but within eight or ten days after the vacancy, and the down-sitting of the session. Some thought this was giving away the Lords' right and privilege of sole choosing, and that it should last only during our own time, and not