

1694. *November 13.* EDGAR *against* CARNEGIE of BALNAMOON.

IN Edgar's improbation, against Carnegie of Balnamoon, they found the maxim, *Nunquam concluditur in causa falsi*, was in favours of the defender, and not the pursuer; and that, having abidden simply by the writ, he needed not condescend *quo modo* he came by it. And they refused to reëxamine the witnesses who had already deponed; but permitted him to adduce such as had not been already examined, providing it did not hinder the advising of the cause.

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1694. *November 14.* WILLIAM MENZIES of RAW, Petitioner.

WILLIAM Menzies of Raw, apparent heir to Major Menzies, desired the Lords' allowance to uplift the rents, till he might deliberate whether he would enter or not, on his finding sufficient caution to make them forthcoming to all parties having interest, that they may not perish *medio tempore*. The Lords, minding they had refused it last session to Wood of Bonnyton, and that it was of dangerous consequence to put apparent heirs once in possession, (though on caution,) they refused this bill, though the *annus deliberandi* was yet running. If he had applied for having a factor named, or to have the rents sequestrated in a neutral party's hands, the Lords would have considered it.

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1694. *November 14.* ANN BAIN, Petitioner.

DAME Ann Bain, relict of Sir John Gordon of Embo, craved the Lords would authorise her and some friends to inspect and inventory her children's writs, &c. in regard the tutors nominated refused to accept, and, by delay, things would go into confusion. The Lords refused to meddle; seeing the tutor-in-law, when the nomination failed, might serve, and then intromit.

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1694. *November 14.* The EARL of NORTHESK *against* KINFAUNS' CREDITORS.

THE Earl of Northesk gave in a petition against the Creditors of Kinfauns, that they should expunge his lands out of their adjudications. The Lords found creditors might adjudge all lands wherein the debtor stood infest, or had right to the property by a disposition; but, if it was only an infestment of annual-rent, or for relief, or the like, in that case they should not insert the lands *per expressum*; but it was sufficient to adjudge from the debtor all right standing in his person, or any claim he had to such lands in general. For, though it be hard to put creditors to instruct their debtors' rights, which they have not yet