

those he got; albeit Muirhead offered to prove that the meal sent at the same time from Scotland gave a much higher price.

As to the *second* head of malversation insisted on, That he returned the ship empty, and did not buy a loading in Ireland, ANSWERED, *1mo.* The seas were then very dangerous, and full of pirates; *2do.* Goods, which could then be got in Ireland, were at a low value, and little or no profit to be had upon them in Scotland. Some were for admitting this to his probation, as relevant to assoil-yie him; but the plurality thought, seeing he acted for him as for himself, that he ought only to give his oath, *ex officio*, whether or no he forbore to buy a cargo in regard the seas were pestered, or that he thought there was little profit to be made by such a return.

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1694. *December 19.* CATHARINE WILKIE and MR RORY MACKENZIE *against* BAILIE GILBERT FYFE.

RANKEILER reported Catharine Wilkie and Mr Rory Mackenzie against Gilbert Fyfe. The Lords opened the decreets *in foro*, found them null, and reponed Bailie Fyfe against them:—*1mo.* Because there was allowed to the said Catharine a third of the moveables to be deduced out of the inventory of the testament, albeit there was none due; the inventory being exhausted by debts, and that her advocate passed from it; as also, that sundry articles, without any probation, were allowed.

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1694. *December 19.* JAMES BAIRD *against* GEORGE INNES of DINKINTY.

JAMES Baird, servitor to Sir James Ogilvie, advocate, against George Innes of Dinkinty, for the spuilie of two horses. The defence was,—I was minor, and they were carrying clay out of my ground without warrant or allowance; and my mother ordered me to seize them.

The Lords thought this sufficient to liberate from a spuilie; but decerned him in restitution of the horses, or their prices, without violent profits; reserving his relief against his mother, as accords.

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1694. *December 19.* CECILIA PAIP, Lady Keilor, *against* RICHARD NEWTON of that ilk.

THE Commissaries had exonerated him in so far as concerned his aunt's portion in Holland, as, by the testament produced, it was left to him.

The Lords found he could have no preference on that head, (she being in a degree equally sib to the defunct;) seeing the same was uplifted and spent by