

Callicini to have carried to Rotterdam. *Qdo.* Of L.300 for not producing the said skipper, conform to his promise, whereon he was holden as confessed. It was alleged the court was held in a tavern, and that judges could not hinder parties to agree, and take up their papers when they had done. The Lords turned the decreet into a libel, and reponed John Spreull again to his oath.

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1695. *February 1.* ISOBEL LUKE *against* WILLIAM DUNDASS.

ARNISTON reported Isobel Luke, relict of Bailie Thomas Wylie, against Mr William Dundass, advocate, about a ruinous upper tenement belonging to the said Mr William, which he neglecting, the rain spoiled the inferior storeys belonging to the said Thomas Wylie. Mr William had, ten years ago, obtained an act of the Dean of Guild of Edinburgh, finding, after a visitation, That the said roof being faulty, he was in the terms of the act of Town-council, ratified in Privy-council 1674, appointing all the heritors to concur and rebuild with stone and lime. Thomas Wylie's relict and children thinking themselves prejudged by this act, they procured a new one, ordaining the said William to repair his roof, as incumbent on him from the natural servitude due by the superior tenement to the inferior. Mr William complained of this last act, alleging the town could not alter their first sentence, and that the tradesmen visitors had varied; first declaring the roof irreparable, and then that it might be helped.

The Lords found the second act wrong, and that they could not ordain him to repair a ruinous roof, being all one as if it had been burnt; and therefore thought they behoved to demolish and rebuild it in stone. But afterwards they altered this in Mrs Wylie's favours.

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1693 and 1695. SIR JOHN INGLIS of CRAMOND, *against* ARCHIBALD PRIMROSE of DALMENY.

1693. *February 17.*—ARCHIBALD Primrose of Dalmeny, and Sir John Inglis of Cramond, having mutual declarators of their rights of fishing in the water of Cramond; the Lords allowed each of them a joint probation, how they had possessed, and if they had debarred or interrupted one another; and laid small weight on Cramond's letter, as being only *epistola officiosa*, writ in a compliment by a young man, who knew not then his own right; and that letters were not *habilis modus*, either to give or take away real rights.

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1695. *February 1.*—The Lords advised the mutual declarators of the right and privilege of fishing on the water of Cramond, pursued by Alexander Primrose of Dalmeny, and Sir John Inglis of Cramond. The Lords thought Dalmeny's rights were both more ancient and special than Cramond's, and that his possession was more pregnantly proven. But, in regard the river was the march