

1692. *November 12.* JAMES MILN *against* The CREDITORS of MILN of Newmiln.

IN the competition betwixt James Miln, bailie of Montrose, and the other creditors of Miln of Newmiln; the Lords refused to admit this allegiance after liti-contestation, at the advising, that James being donator to the escheat, he was bound to have done diligence for his own payment; seeing such donators (like executors creditors) have the only title to pursue established in their persons, and should not allow the debt to perish. Likeas, the Lords thought a donator not liable for omissions, unless he had debarred others from intronitting; and here James had obtained a decreet and brought it the length of a caption, but had not executed it; therefore, they ordained him to assign his diligence to the other creditors.

See the act of sederunt, 14th Nov. 1679, anent executors creditors being obliged to do diligence; and *Stair*, 17th January 1678, *Crauford*, where a donator was not tied to omissions; only, there was a second gift in that case; but the Lords mainly repelled it in Miln's case, because not proponed *debito tempore*; though a relevant allegiance either *in jure*, or instantly verified when *in facto*, is receivable even at sentence.

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1692. *November 16.* JOHN CHANCELOR *against* Captain SLETZER.

IN the mutual petitions between John Chancellor, merchant in Edinburgh, and Captain Sletzer, the Lords refused to examine John Trotter, the cedent, if the debt was paid, to the prejudice of Chancellor the assignee; though all his assignation was only a precept from Trotter on Sletzer, not having onerous causes *per expressum*; and seeing Sletzer decline to depone, they held him as confessed, though he was departed for London.

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1692. *November 17.* SIR JAMES DOUGLAS of Kilhead *against* ANDREW MARTIN.

SIR JAMES DOUGLAS of Kilhead, having charged Captain Andrew Martin, merchant in Edinburgh, to fulfil a minute, whereby he was to pay L.40,000 Scots for the lands of Pilrig; and he suspending, that the minute was imprestable for want of a sufficient progress and security of the lands, and so null. The question arose, if the bill of suspension should pass without caution, seeing the charger refused to dismiss it summarily, desiring rather to let it pass, he getting caution for the price of the land; and the other contending, the term of his payment was not till Whitsunday next, and so he could not be obliged to find caution before the term for so great a sum.