

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.

The Lords took a middle course, and ordained him to find caution for what was instantly prestable by him, viz. for extending the disposition; and for his entering to the possession of the lands, they ordained the present factor to continue and to be comptable to any who shall be found to have right to the rents in the event of discussing; but they thought the debate running on the nullity of the minute, it was both their interests to have it summarily determined.

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1692. *November 17.* The COBLE-FISHERS on the Don *against* The HERITORS of the Cruives.

MERSINGTON reported the objections against the hability of the witnesses adduced at the visitation of the salmon-fishing on Don, made by the coble fishers against the heritors of the cruives, viz. against Dr. Middleton, that he was son-in-law to James Gordon of Seton, who was a party that could tine and win in this cause, being an heritor of a coble. The Lords thought it hard to admit him, unless there was *penuria testium*, which would appear at advising. But their manner of fishing was not such a latent thing, as that there could be a penury for clearing it. *2do*, It was objected that the fishers could not be habile witnesses, because they were hired servants to the coble-heritors, and who could turn them off.

ANSWERED, they were not domestics, and they were common servants to the cruive-men, as well as to the coble-fishers, and were not constant servants, but only at set times of the year, and could no more be rejected than a mason, wright, or ditcher, employed by us.

The Lords found them legal witnesses, unless they dwelt on the lands belonging to the coble-men, and were not cottars, but removeable by them.

[See the subsequent part of the report of this case, *Dictionary*, p. 14287.]

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1692. *November 18.* LORD SALINE and ANDREW RULE *against* ALEXANDER BINEY *alias* GORDON.

UPON the mutual bills given in by my Lord Saline, and Mr. Andrew Rule, on the one part, and Alexander Biney *alias* Gordon on the other. The Lords ordained any writs lying beside the deceased Mr. Alexander Biney, advocate, belonging either to his brother Saline, or to my Lord Forrester, to be given up, on receipt, at the sight of Lord Anstruther who inventoried his charter-chest; unless they be owing him money; as also appointed the writs of the lands of Skelmore, &c. disposed by the said Mr. Alexander to the said Alexander Gordon, to be given up to him, and his father as his administrator, upon inventory, and obligation to re-deliver them in case Saline prevail in his reduction of this disposition *ex capite lecti*. And refused to sequestrate the rents *medio tempore* during the dependence of the reduction; but allowed the party to whom they were disposed to continue