

1693. *January 24.* MARGARET OGILVY, LADY REDELOCK, and ROBERTSON of Faskally *against* GEORGE KEITH of Whiterigs.

MARGARET OGILVY, Lady Redelock, and Robertson of Faskally, now her husband, against George Keith of Whiterigs, sheriff-depute of the Mearns. The Lords adhered to their former interlocutor, and found the contract being entered into by him in contemplation of his succeeding as heir male, and he being debarred by the daughter, there being no tailyie, the said contract fell to the ground, not only *quoad* the provisions to the daughters, but also to the wife's liferent. Some of the Lords inclined, if she had sustained damage by this transaction, in forbearing to crave her jointure from the tenants, that George Keith, in that case, should pay her bygones, though the contract be annulled *pro futuro*; but the rest considered that he, within a few days of the contract, reclaimed, whenever he discovered that he was debarred from the succession; so that he could not be liable for her bygones, unless he intromitted with the rents of her liferent lands.

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1693. *January 24.* GEORGE M'KENZIE of Rosehaugh *against* The TOWN OF ELGINE.

The Lords found the extract of the act out of the Town Council books, settling L.40 Scots yearly of pension on Sir George M'Kenzie, as their advocate, sufficiently probative against the town; but did not find their other act, bearing, he was yearly paid thereof by their treasurer, probative, for the said town; seeing their books proved against them, but not for them: reserving action to them against their clerks, as accords, for giving out such extracts. And found the letter produced, wrote to them by Sir George M'Kenzie when he was made king's advocate, showing he could not attend their affairs, nor lead their processes, was a renunciation of the pension after that; and that his proposing his brother Mr. Coline to succeed him in their affairs, was not a conditional reservation to return again to himself if they should not employ Mr. Coline, but was only a recommendation.

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1693. *January 24.* JOHN ELIES *against* ANDERSON.

THE mutual bills between Mr. John Elies and Mr. Anderson being considered, after each of them had consigned six dollars to the poor's box, by which the Lords declared their dissatisfaction at the process; they found, that each of them had used opprobrious expressions against one another, and that it was not fit to encourage such defamation amongst so near relations, as father and son-in-law;

and without putting either of them to prove, they assoilyied both; and found, that such delicts and slanders *mutua compensatione tolluntur*.

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1693. *January 25.*

ROTHES *against* CAMPBELL.

THE Countess of Rothes, and the Lord Haddington, her son, against Thomas Campbell, Deacon of the Fleshers, in Edinburgh, for summarily removing, at Candlemas next, from the Park of Holyrood-house, whereof he had a tack, and gave it over, complaining he was a loser; and now being set to Alexander Ramsay, he refuses to remove.

ALLEGED, He was not bound *hoc ordine* to answer upon a bill *per modum simplicis quærelæ* without a formal process and citation, not being a member of the Session.

ANSWERED, This was the King's Park, and he had *dolore* given it over, and on printed programs they had roused and set it to another, and so were liable in warrandice, and the case required summary dispatch.

The Lords refused to oblige him to answer in this manner; but thought the Countess could pursue him before the Sheriff of Edinburgh, and soon obtain a decret against him, on her proving his overgiving.

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1693. *January 25.*

DAVID CALLANDER *against* GIB.

DAVID CALLANDER, servant in the Exchequer, against Gib. The Lords found it was a clear bargain and transaction, whereby Gib took his hazard of an heir, and was in *omnem eventum* to pay 1000 merks, whether the gift proved effectual or not; and that it was *emptio spei*, and a bargain *per aversionem et jactus retis*, whereby Gib took the right *talis qualis*; and as he had the prospect of gain, so also he undertook the hazard. Some of the Lords were for sustaining those defences as relevant to assoilyie Gib, that he intimated to David Callander, before his expeding of the gift, to desist and forebear, in regard there was an heir appearing, and offering to serve heir to Neil, whose gift of *ultimus hæres* they were taking. Others were for trying that point of fact before answer; but the plurality determined against it, in regard by a clause in the contract, obliging them to concur if any heir should appear, it seemed that case was under view and provided for. Some moved to supersede execution for the 1000 merks, till the event of the reduction raised of the heir's service on the head, that he had no contingency of blood to the defunct.

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