

1693. *February 7.* ROBERT FALL, bailie of Dunbar, *against* The RELICT of JAMES FALL.

THE Lords repelled the objections against the decreet of general declarator of escheat, that it did not fully deduce the executions of the horning, and though the denunciation bore that the messenger's stamp was affixed, yet no vestige of any such stamping appeared; for the Lords considered that it was not a recent horning, and that their impression is slight, and soon wears of; and, therefore, found these were no nullities; seeing in a stronger case of an inhibition, on the 19th Dec. 1690, between *Doctor Sibbald* and *Mackell*, they found it no nullity after fifteen years, though there appeared no vestige of the stamp. But as to the *2d* point, they sustained this allegiance as relevant, that thir goods were not the relict's nor her second husband's, whose escheat they were declaring; but were truly the moveables of Embleton, her first husband, and belonged to his children, and were only detained by their mother, and made use of by her and her second husband. For though possession in moveables be a presumptive title, yet it is elided by a positive contrary probation, offering to prove the property belonged to another, and that your entry to the possession was by retaining them in the house after your husband's death. But found, that the wife's share of these goods, whether a third or a half, if not excluded by her contract of marriage, fell under the husband's *jus mariti*, and consequently under his escheat *pro tanto*.

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1693. *February 7.* GEORGE ROBERTSON, petitioner.

GEORGE ROBERTSON, merchant in Glasgow, complains, that he was pursuing one Pollock, a skipper, before the Admiral, who was like to assoilyie the said Pollock, whereby his cautioner *judicio sisti* would be liberated, he being bankrupt himself; therefore, craved the Lords would not advocate this maritime cause; at least, that they would give such directions to the Admiral-depute in his procedure, that the petitioner might not be wronged: as is usual in remitting causes to inferior judges, and particularly to the Commissaries of Edinburgh, in the case of divorces, (whereto they are sole and private Judges *in prima instantia*.)

The Lords refused the desire of this petition; for seeing they could not advocate maritime cases from the Admiral by the act 1681, therefore they would not officially intermeddle by prescribing any rules to him. *Vol. I. page 555.*

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1693. *February 8.* The DUKE OF QUEENSBERRY *against* WILSON of Spango.

THE Lords found the instructions produced by Spango, of 1600 merks, as an article of his discharge in the account, not fully probative that the money came to the Duke's use; and the question being stated, whether the Duke's oath or Spango's

should be taken thereon, it carried Spango's. But being taken *ex officio*, they would not hold it as a full probation, but ordained him also, on a diligence, to recover Francis Kinloch's books, if any thing of this was stated there.

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1693. *February 8.* THOMAS RANKEILLAR and MICHAEL GEDDY *against* The MAGISTRATES of St. Andrews.

THOMAS RANKEILLAR and Michael Geddy, skippers in St. Andrews, against the Magistrates thereof. The Lords found the pursuers had sufficient interest to lift the money; but considered first if there was any necessary cause for calling for it at this time; and therefore ordained them to condescend why they did not think it sufficiently secured in the town of St. Andrews hands; and if they should uplift it, then ordained them to re-employ it again, and not to break the stock; but discerned them to get the bygone annualrents.

It was PLED in this cause,—That a society and incorporation could not subsist in fewer than three, and that here there were only two skippers; and so the corporation of the seamen of that town being dissolved, this sum either fell as caduciary to the fisk, or returned to the city within which the decayed incorporation had acquired that fund.

But the Lords did not regard this subtlety, for the rest of the seamen there concurred with thir pursuers.

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1692 and 1693. HEW WALLACE of Ingliston *against* LORD FORRESTER.

1692. *November 30.*—HEW WALLACE of Ingliston against my Lord Forrester. The Lords did not incline, by the depositions of witnesses, to make up the tenor of interlocutors amissing or abstracted, but rather to hear them upon the material grounds of justice which may induce the Lords to renew them; and, therefore, *ante omnia*, ordained Thomas Baillie to fit his accounts during the years he was factor on the estate of Corstorphin, and my Lord Forrester to give in his objections against the same. And if by the balance, Thomas was found debtor, the Lords would, at advising, consider if Hew Wallace should be liable for him *subsidiarie*. And as to the other interlocutor, of Mrs. Martha Temple's annuity, depending on Hew Wallace's right, it being alleged, that since November 1689, the present Lords of Session had found the same; they ordained the Lord Ordinary to try that, and if it was not so, to hear them on the grounds of law why it should not subsist as a separate debt alone. *Vol. I. page 525.*

*December 14.*—Hugh Wallace of Ingliston against the Lord Forrester, mentioned 30th November last. It was ALLEGED,—The commissary's decret was more than a decret in absence; seeing the passive titles were proven, not by cir-