

1693. *November 14.* THOMAS LAURY *against* The MARQUIS of ATHOLE.

ONE Thomas Laury, merchant, his bill against the Marquis of Athole, seeking out his decret, in regard the Marquis had been in town and had not deponed,—the Lords, *ante omnia*, ordained the Marquis to pay the £40 formerly modified for his expenses; and then allowed him to extract a new commission, on his own charges, to depone at Perth; to be reported against the 8th of December next, Thomas naming the commissioner; and with this quality, That, if the Marquis did not take out the commission, the former decret should be extracted against him, without Thomas being put to circumduce the term against him on this act.

*Vol. I. Page 569.*

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1693. *November 14.* The EARL of SUTHERLAND *against* The EARLS of ARGYLE, CRAWFORD, ERROL, and MARISHALL.

THE Earl of Sutherland, upon a remit of Parliament, craves, that the Earls of Argyle, Crawford, Errol, and Marishall, competing with him for precedency, may presently answer. They ALLEGED, That the bill was not remitted, but only the action and cause; which necessarily presupposed the raising a summons and citation in common form.

The Lords having considered the remit, they found the Parliament had only dispensed with the order of the roll, but not with the preliminaries and formalities of process; and therefore, that the defenders behoved to be cited. But some thought their answering on this bill a material compearance.

*Vol. I. Page 569.*

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1693. *November 8, 9, 11, and 14.* WALLWOOD, COLVIL, and DUNCAN, *against* BARBARA SETON, and WILLIAM HALY her Husband.

*November 8.*—THE reduction pursued by Wallwood, Colvil, and Duncan, against Barbara Seton, and William Haly her husband, was debated *in presentia*; and the following points were this day determined with open doors, in presence of the parties and their lawyers:—

*Imo.* The Lords found, That the defence of competent and omitted did not exclude thir pursuers from insisting in their reduction, seeing the reasons now repeated were not competent then by way of exception: though some alleged, that, in form, they ought at least to be proponed, though they be repelled as incompetent *hoc ordine*, to the effect they may be reserved; especially seeing that competent and omitted is not an exception *juris communis*, but introduced only by our statute *ad abbreviandas lites*. And the President thought, one might raise a reduction upon one reason, as *supra lecto aegritudinis*, or the like, and, if he succumbed in that, he might raise a new one *super capite inhibitionis*, &c. seeing he only delayed himself. Yet by these he vexes others.

The *second* point was, You cannot insist in the reduction of this decret; be-