

gave in a bill, representing, That, in his absence, when he durst not appear, he was holden as confessed, at Bailie Thomas Young's instance, for 10,000 merks, for not deponing; and desired now to be reponed to his oath, that the said debt might not affect his estate, though this was more the King's concern, who succeeded him, than his heirs'. The Lords thought this not the habile way; but allowed him to give in a bill of suspension, when his case might be considered;—only the difficulty there is, that the Ordinary, in the vacance, cannot take his oath. *Queritur*, If this offer should exoner him of the former circumduction holding him as confessed.

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1693 and 1694. The LORDS of SESSION *against* The TOWN of EDINBURGH.

1693. November 1.—GEORGE Falconer, one of the two keepers of the Parliament-House, having died during the vacance,—Alexander Livingston procures an act of the Town-Council of Edinburgh, presenting him to that place,—they ALLEGING, the House being theirs, and they paying fifty merks of salary, and all reparations and other expenses, it was but reasonable they should name the servants, at least that they have the presentation of one of them. It was ALLEGED for the Lords, That the Town might as well plead the in-putting of servants to keep the Privy-Council and Exchequer-rooms; and that the greatest part of the emoluments arise from the Lords and Advocates, and others depending on the College of Justice.

The Lords referred it to the President, to confer with the Magistrates of Edinburgh, and to report. And the result of their first meeting was to search the records of the Session and Town in times bygone, and see who had been in use and possession of placing them, either when it was in a single person or in two; and then to consider what should be so produced and found.

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1694. June 4.—The Lords of Session and the Town of Edinburgh came at last to an accommodation about choosing a housekeeper in place of George Falconer, deceased; that, seeing there were always to be two, they should present them *per vices*. And in regard Mr Kennedy, the last entrant, came in by the Lords' nomination, that the Town-Council should now give in a list of three to the Lords, out of which the Lords would choose one; and, on the next vacancy, the Lords should present three to the Town, out of which they should elect one; and so *per vices*, as oft as it occurred. And thir two cautions were adjected: 1st. That all presented in the lists should be burgesses; though some of the Lords urged they might have freedom in their lists to name decayed members of the College of Justice; but it was thought such were either burgesses, or could be made so. 2d. That the presentation and election should not be procrastinated, but within eight or ten days after the vacancy, and the down-sitting of the session. Some thought this was giving away the Lords' right and privilege of sole choosing, and that it should last only during our own time, and not

prejudge our successors ; but, on searching both the Town's records and the books of sederunt, the right was unclear, and both claimed it.

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1694. *June 4.* ALEXANDER CROMBIE *against* HIS CREDITORS.

THE Creditors of Alexander Crombie, vintner in Edinburgh, pursuing a roup and sale of his lodging in Edinburgh, on the statute of bankruptcy ; the Lords found it proven to be worth yearly £1000 Scots of rent, and that it might be set at that rate ; and valued it at twelve years' purchase ; though sundry thought that price too high. And for the six market-crosses, the Lords would not make Edinburgh six several parish-kirks, (as it had so many churches,) but only to stand for one parish ; and added the Canongate, West-kirk, two parishes in Leith, and that of Duddingston, to make the other five.

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1694. *June 4.* SIR WILLIAM DENHOLM of WESTSHIELS *against* GEORGE LOCKHART of CARNWATH.

THE Lords, having advised the bill and answers of Sir William Denholm of Westshiels, and George Lockhart of Carnwath, they adhered to their former interlocutor, finding the assignation given by Westshiels, to the deceased President Lockhart of Fordel's bond, behoved to be ascribed in payment of the 2000 merks bond which he and Allanton owed Sir George, unless they would condescend on another debt for which this assignation was given ; but found the allegiance relevant, by Westshiel's oath, that it was for another debt.

A debate arose, If his brother Walter's oath ought also to be taken ; seeing he confessed, in the answers, that he gave Walter the assignation blank in the name of the assignee : And, though some alleged it might be a dangerous preparative to take away rights by an interposed party's oath, who was no more but as a servant to carry and deliver it ; yet the Lords ordained him also to be examined anent the cause of it, Whether there was any other bond or discharge in the case ; Westshiels always, in the first place, deponing that he delivered the assignation to Walter, his brother, blank in the name.

The next question was, If Carnwath, having innovated the former bond assigned to him, and taken a new one from Fordel, can be exonerated by offering Westshiels a right to that bond. The Lords generally thought he could not ; but, in regard a prior interlocutor gave Carnwath the election, either of paying or assigning to this new bond ; therefore, before they would alter, allowed him to be farther heard thereon.

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