

as I have given it;—as was found between *Balnmoon* and the *Earl of Southesk*, in William Carnegie's accounts. Yet, where parties are bound to give in a charge against themselves, as factors, tutors, &c. it were very unjust to suffer them to exhaust their intromission with uninstructed articles of discharge. And here, there being also a back-bond granted by Sir Robert, obliging him to hold count, the Lords found he ought to instruct the said £17,000.

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1694. *December 18.* ROSS of TILLYSNAUGHT and MIDDLETON *against* WILLIAM TURNER, Notary.

Ross of Tillysnaught and Middleton, against William Turner, notary, anent a testament. The Lords, having considered the reasons of reduction, with the probation led, they assoilyied from the reduction, and sustained the testament as a valid and probative writ. It was urged, that the witnesses were inserted at the head in a preface or title to the testament; which was both suspicious, unusual, and contrary to the 173d Act, 1593, and 5th Act, 1681, requiring the witnesses to be at the end of the writ. This was thought to be of a dangerous preparative: Yet here the Lords repelled it, because it appeared it was read to the defunct; though some of them did not remember they heard the word *heir* and *executor* in the title read; and farther, the body of the testament began, "the said Robert Middleton." There were sundry other objections against this testament, which the Lords repelled.

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[It would appear, from the following intimation of a protest, by Turner, for remeid of law, that the Lords, by a subsequent interlocutor, found the testament null.]

1707. *July 31.*—William Turner, notary, protested for remeid of law against Alexander Ross of Tillysnaught, his decret, reducing Robert Middleton's testament; and that the interlocutor was not signed for several days after the sentence was pronounced, contrary to the Act of Parliament 1693.

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[See the subsequent action raised by Ross against Turner, *infra*, 1710, November 14.]

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1694. *December 19.* GEORGE MUIRHEAD of STEVENSON *against* WILLIAM STEWART, Merchant in Glasgow.

THE Lords found the contract between them, for transporting the meal to Ireland, did not import an obligation on Stewart to go along with it personally; and that he, having delegated his own brother, and sold Muirhead's part as he did his own, the Lords would not tie him to count for any other prices but