

1695. *January 29.* CUNNINGHAM of MONTGRENAN *against* The REPRESENTATIVES of GENERAL DOUGLASS.

CUNNINGHAM of Montgrenan against the Representatives of General Douglass, anent repetition of the composition paid for his forfeiture. All the strait lay in the making it appear that the money was paid for that cause, the conveyance being so dark.

The Lords, before answer, allowed probation to be taken of all the circumstances and presumptions founded on, as to the manner of the payment, &c.

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1695. *February 1.* CLARA and PATRICIA RUTHVENS, *and* MURRAY of SPOT, Husband to the said CLARA, *against* Mrs MARTHA TEMPLE, Relict of EDWARD RUTHVEN.

THE Lords for expiscating whether the L.1000 sterling bond, taken in name of Sir Stephen Fox, or Sir Charles Littleton, for Mrs Martha's behoof, was Edward Ruthven's money or not; they ordained Mr David Hay, who paid it, and all other persons, to be examined; though some thought it could not be taken away but by her oath that she knew it was her husband's. Spot's design was, by constituting this debt, to make a ground of compensation against the L.200 sterling of liferent annuity she possessed out of the lands of Corstorphin.

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1695. *February 1.* MAXWELL of GARNSALLOCH and the EARL of TRAQUAIR, *against* CASTLEMILK and CARRUTHERS of DORMONT.

NEWBYTH reported Maxwell of Garnsalloch and the Earl of Traquair, against Castlemilk and Carruthers of Dormont. The Lords found Dormont was *in mala fide* to take assedations of the land from Castlemilk, after the interpellation by processes, in defending against which he was the principal manager; and that the payment he made by virtue of these tacks behoved to fall in consequence.

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1695. *February 1.* JOHN DUNDASS and ROBERT SELKIRK, *against* JOHN SPREULL.

PHILIPHAUGH reported Mr John Dundass, admiral-depute of the West Seas, and Robert Selkirk, his procurator-fiscal, against John Spreull, merchant in Glasgow, for a fine they had imposed on him;—*1mo.* Of 500 merks for not reproducing the papers which instructed Skipper Thomson's malversation, by unloading the Portugal wine at Glasgow, which he was bound to Francisco

Callicini to have carried to Rotterdam. *Qdo.* Of L.300 for not producing the said skipper, conform to his promise, whereon he was holden as confessed. It was alleged the court was held in a tavern, and that judges could not hinder parties to agree, and take up their papers when they had done. The Lords turned the decreet into a libel, and reponed John Spreull again to his oath.

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1695. *February 1.* ISOBEL LUKE *against* WILLIAM DUNDASS.

ARNISTON reported Isobel Luke, relict of Bailie Thomas Wylie, against Mr William Dundass, advocate, about a ruinous upper tenement belonging to the said Mr William, which he neglecting, the rain spoiled the inferior storeys belonging to the said Thomas Wylie. Mr William had, ten years ago, obtained an act of the Dean of Guild of Edinburgh, finding, after a visitation, That the said roof being faulty, he was in the terms of the act of Town-council, ratified in Privy-council 1674, appointing all the heritors to concur and rebuild with stone and lime. Thomas Wylie's relict and children thinking themselves prejudged by this act, they procured a new one, ordaining the said William to repair his roof, as incumbent on him from the natural servitude due by the superior tenement to the inferior. Mr William complained of this last act, alleging the town could not alter their first sentence, and that the tradesmen visitors had varied; first declaring the roof irreparable, and then that it might be helped.

The Lords found the second act wrong, and that they could not ordain him to repair a ruinous roof, being all one as if it had been burnt; and therefore thought they behoved to demolish and rebuild it in stone. But afterwards they altered this in Mrs Wylie's favours.

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1693 and 1695. SIR JOHN INGLIS of CRAMOND, *against* ARCHIBALD PRIMROSE of DALMENY.

1693. *February 17.*—ARCHIBALD Primrose of Dalmeny, and Sir John Inglis of Cramond, having mutual declarators of their rights of fishing in the water of Cramond; the Lords allowed each of them a joint probation, how they had possessed, and if they had debarred or interrupted one another; and laid small weight on Cramond's letter, as being only *epistola officiosa*, writ in a compliment by a young man, who knew not then his own right; and that letters were not *habilis modus*, either to give or take away real rights.

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1695. *February 1.*—The Lords advised the mutual declarators of the right and privilege of fishing on the water of Cramond, pursued by Alexander Primrose of Dalmeny, and Sir John Inglis of Cramond. The Lords thought Dalmeny's rights were both more ancient and special than Cramond's, and that his possession was more pregnantly proven. But, in regard the river was the march