

delivery of a manuscript book of receipts he had learned from Mr Sawyers, and sundry other famous mountebanks and physicians. The Lords thought, if it was lost by Walston *casu fortuito vel culpa levissima*, he was not liable; but, finding it was pointed from him, among other goods in a trunk, by his fault, they allowed him to give in a condescence of his damage, and depone *in litem* what he estimates the same to; and he swearing he had rather given 1000 merks than want it, the Lords thought his *præmium affectionis* extravagant; and modified 500 merks, (many voting only £100 Scots,) with this quality, That if Walston recovered the book, and restored it, he should be free.

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1696. *February 21.* JOHN LOCKHART, now of LEE, Petitioner.

JOHN Lockhart, now of Lee, gives in a bill, representing he cannot yet determine to whom he shall enter heir, because Richard the last heritor has done deeds in contravention of the tailyie, and, if he should serve to him, he could not then be admitted to quarrel his deeds; and he cannot get brieves for serving to Cromwell Lockhart, his eldest brother, seeing he died not *ultimo vestitus et satus*, till he had obtained a declarator, annulling and removing his brother Richard's infetment out of the way; and therefore craved they would put in a factor to manage the estate *medio tempore*.

The Lords considered, that, at the desire of creditors, where fortunes were incumbered, and multiplepointings and competitions depending, they used to sequestrate, but not at the desire of apparent heirs, especially where it was designed to put the relict out of possession of her jointure; and, if the Lords granted factories in this manner, apparent heirs would always lie out and shun the passive titles too: And therefore refused the desire of his bill as it stood.

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1696. *February 22.* DAVID DEWAR *against* DAVID FRENCH.

[See the prior parts of the Reports of this Case, Dictionary, page 241.]

MR David Dewar, advocate, having complained on David French, agent, that he had uttered irreverent and unbecoming expressions of the Lords; and probation being led thereon, and the same being proven by witnesses, (against whom David French objected as prejudicate, having pleas depending between them, yet were sustained, being *actio popularis*, and the Lords' interest, not that of private parties,) they sent him to prison, and fined him in the sum of 1000 merks, but restricted it afterwards to 500 merks.---*Vid. l. 7. D. ad Leg. Jul. Majest. et L. Unic. C. Si quis imp. maledic.*

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