

1708. *February 27.* SIR WILLIAM GORDON and DAME MARY CAMPBELL  
*against* LORD CESNOCK and his LADY.

SIR William Gordon, brother to Earlston, and Dame Mary Campbell, Cesnock's eldest daughter, his lady, protest for remeid of law against an interlocutor preferring my Lord Cesnock and his lady, who was Cesnock's second daughter, to the sum of £400 sterling he had subscribed for in the African company's books, and Mr William Hall, their assignee.

Colonel Gordon's lady had a special assignation to it from Sir George Campbell of Cesnock, her father, with a quality, That either he or his lady might dispose on it otherwise. He, afterwards, by a disposition, revokes the power given to his lady, and disposes all his effects in general, without specifying this African money, to the Lady Cesnock, his second daughter : and, upon some transactions betwixt the two husbands, Colonel Gordon discharges all he can ask or crave any manner of way : So the Lords found his Lady's right to the said equivalent money revoked. Against which interlocutor he appealed.

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1708. *February 28.* SIR HUGH CAMPBELL of CALDER *against* The CREDITORS  
of HAY of PARK.

SIR Hugh Campbell of Calder being creditor to Hay of Park, and having had considerable intromissions with his estate, and being convened, for count and reckoning, by Jerviswood, Kemnay, Whitsled, and the other creditors : and the Lords having refused to allow him the expenses of his infetment of relief, as no real burden on the lands, and found him liable to count for the rental, though he pretended the other creditors had a promiscuous intromission, &c. : and having this day refused his reclaiming bill, Sir David Forbes having offered a protest for remeid of law in Sir Hugh's name,---the Lords asked him if he had a special mandate for that effect ; and he replying that he was his ordinary advocate, and had letters from him in general, authorising him to manage his law affairs, as if he were present, but no special warrant to appeal :---the Lords rejected his protestation, and likewise gave him a reprimand, and called in the Dean of Faculty and Advocates, and advised them to be more cautious and wary in time coming.

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1708. *February 28.* The EARL of ROSEBERRY *against* SIR JOHN INGLIS of  
CRAMOND.

THE Earl of Roseberry having given in a bill, showing, He had obtained a warrant from the House of Peers in England to cite Sir John Inglis of Cramond, to give in his answers on the appeal against him anent his fishing in that water,

and craving the Lords to authorise their clerks to send up these principal depositions of the witnesses to London for verifying his appeal :

The Lords delayed giving any such order, till they saw a warrant from the House of Peers to that effect.

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1708. *February 28.* ANDREW SHIELS *against* GEORGE YOUNG.

ANDREW Shiels, writer, gave in a complaint against George Young, merchant, his uncle, that there being several processes depending betwixt them, and he coming to the said George his house on the 9th February last, he assaulted and invaded him, by thrusting and beating him on the breast, and throwing him over a chair; whereby he had incurred the penalty of the 219th Act 1594, of losing the plea.

ANSWERED,—The Act never meant such a frivolous scuffle as this, where there was no bloodshed; but only speaks of such invasions as might be the ground of a criminal pursuit, which this could never be.

The Lords, having advised the probation, found, That he, after many reproachful words, took him by the breast, with a design to thrust him out of his house, and, in beating him, threw him over a chair; that his heels were higher than his head; and considered, that the throwing a dish or glass at the party's face, when they had depending processes, was enough, in the terms of the foresaid Act of Parliament, to make them lose the cause; and that the law was most necessary to bridle the *præfervidum Scotorum ingenium*; and therefore found Mr Young's beating in the terms of the Act of Parliament; and declared he had lost the plea.

Young represented, by a bill, that it was a downright plot and contrivance of Shiels to ensnare him. He first buys in a debt of his, and steals out an act of warding against him; and, because it cannot be executed within doors, he falls upon a trick to draw him out, by sending a boy to him, desiring he would come to John Reid, his agent, who waited for him at the close-head; which he believing, came out, and behold Shiels and his messenger instantly seize him, and threaten to carry him to prison. He, discovering the trepan, desired them to go down with them to his house, and he would satisfy them, either with money or security. And accordingly Shiels and all go down; and Shiels gave him most provoking language in his own house, which is a man's sanctuary; and all contrived to ensnare him: Whereupon he only took him by the breast, to shut him out of his house; and if he wilfully fell, he was noway the occasion of it, but was done of purpose; *et dolus suus nemini debet prodesse*, but, on the contrary, he ought to be fined in a considerable sum for this trick, and the same given to Mr Young for his damage, in personating Mr Reid, his friend and agent; and so training him into the gin.

The Lords thought Shiels's management not very cleanly; but he denying it, they superseded to give answer till June; but adhered to the interlocutor against Young, anent the tinsel of the depending cause, for a preparative and warning to others to abstain from violence in carrying on their law processes against their antagonist in the cause.

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