

1693. *January 20.* JOHN GRIEVE of Pinacle *against* WILLIAM RUTHERFORD.

THE Lords reponed Mr. John Grieve of Pinacle against William Rutherford's decret, on the account it was founded on this allegiance, that Grieve had taken up the papers; and yet that was not proved.

But the Lords modified to Rutherford 100 merks for his expenses.

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[*See Rutherford against Grieve, 28th June, 1694, infra.*]

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1693. *January 20.* JAMES BROWN *against* SIR PATRICK HEPBURN of Blackcastle.

JAMES BROWN, apothecary in Edinburgh, against Sir Patrick Hepburn of Blackcastle. The Lords allowed James Brown to adjudge on the warrandice of his disposition *declaratoria juris*, that it should not affect Sir Patrick's other lands, but only in case of distress, and effeiring to the eviction; both because Sir Patrick was notourly broken, and other creditors had already adjudged, and he was striving to be within year and day; and there was eminent hazard of eviction, both from Sir John Hall and Lord Hareus: for if distress should exist, then he should be without year and day, and so unjustly cut off; and if it should never occur, then his adjudication would take no effect, and do the other creditors no hurt: And it was remembered, that lately the Lords allowed Robert Burnet to adjudge Dawick's estate, on a bond of cautionry, though the term of payment was not come, he not being then distressed; but it was only conditionally in case of distress.

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1693. *January 24.* SIR ALEXANDER FORBES of Tolquhon *against* JOHN FORBES, writer in Edinburgh.

As to the consultations he had debursed in Tolquhon's affairs, when his agent, the Lords, in fortification of the advocate's and writer's declarations, that they had received money from him several times in Tolquhon's affairs, allowed him to depone on the verity of the account given in by him: and found John Forbes accountable for the meal only at the rate of L.5 per boll, and notwithstanding that Tolquhon's precept bore value received; but that John Forbes's accounts could not be deduced off the bond bearing annualrent, so long as he had other money in his hand unaccounted for.

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