

1693. *January 31.* WILLIAM BELL *against* The MAGISTRATES of Linlithgow.

WILLIAM BELL, town-clerk of Lithgow, against the Magistrates and Town-council thereof. The hail Lords were clear to annul the act of deprivation as informal, and a summary proceeding without probation. But some thought the malversation charged on him relevant to infer deposition, if it were true. Others, that it might oblige him to repair the Town's damage, by his being the occasion of heightening their excise; but that every fault was not like Draco's law, to infer loss of an office provided during life. Some were for turning the decret into a libel, and hearing the Town on this, or any additional articles of malversation against him. But the generality found the deprivation illegal, and reponed him again to his place; and would not so much as sustain them as a libel, nor to add their other grounds, but remitted them to pursue him *via ordinaria*, if they had a mind, by way of process. The next question will be, if he can claim the intermediate profits and emoluments of the place since his deprivation, for summary removing of servants or clerks without a process. See 14th February, 1665, *Sir William Thomson against the Town of Edinburgh*, if it may be done *de plano sine strepitu et figura judicii, per modum simplicis quærelæ*.

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1693. *January 31.* JAMES PRINCE *against* WILLIAM SOMMERVELL.

THE Lords did not regard that objection against the decret of cognition of Sir Magnus Prince's debt against the heirs of Edward White, the clerk of his brewery, before the Commissaries, that it proceeded only upon the count-book, and that the *idoneus et legitimus contradictor*, viz. Edward's wife, and her heirs, to whom Edward, wanting children, had disposed all his means and effects, were not called thereto; and that only three or four auditors, named by the bailies to peruse the accounts, subscribed the report; for they thought he was obliged to cite none but the nearest of kin to White, his debtor. But in regard that Sommervell had a clear and evident interest, and had never yet been heard how the said account had been made up, the Lords allowed him yet to condescend on this prejudice and lesion he sustained by that decret of cognition, before they would loose or lay it open, or decern the parties to enter into the labyrinth of a new account, Sir Magnus being dead, who best knew how to clear it.

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1693. *February 1.*

THE Lords, upon an objection made against a seasine, that it had only two witnesses, found it no nullity, and that four were not necessary, else many seasines

would fall ; and that Stair, M'Kenzie, and others, were all of this opinion ; and the act of Parliament 1584, speaks only of a reasonable number of witnesses to seasines,—which may be verified in two.

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1692. *December 6, and February 2, 1693.* IRVINE of Artamford *against* ROBERT KEITH of Lentush.

1692. *December 6.*—IN the petition given in by Irvine of Artamford against Mr. Robert Keith of Lentush, craving a sequestration of the rents of the lands of Fedderet ; and Artamford's probation on a commission that Lentush's possession was *vi clam vel precario*, when he was executing a caption against Fedderet, and seeking him in his own house, that he kept possession of the house ; the Lords now granted a conjunct probation to Lentush to instruct the manner of his entry to the possession, whether it was *via juris aut facti*,—to be reported the 8th January ; and, in the mean time, ordained them to discuss the point of right and preference ; with certification, that whoever tergiversed or failed, the possession should be given to the other party.

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1693. *February 2.*—Irving of Artamford against Mr. Robert Keith of Lentush, mentioned 26th December, 1692. The Lords would not admit of this exception to stop a certification in an improbation, that you cannot quarrel my right, because you gave warrant to Irving of Cults to subscribe that contract for you, wherein you restricted your sum, and passed from your legal ; and I am content to pay you, and offer to prove the giving the warrant by your oath : for the Lords considered Artamford was not in town, and to grant a commission, was to stop the process till June ; and, therefore, repelled it *hoc loco*, but reserved it when they should come to debate the reasons of reduction.

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1693. *February 3.* The ADMINISTRATORS of HERIOT'S HOSPITAL *against* SIR WILLIAM NICOLSON'S Creditors.

THOMAS FISHER, treasurer, and the other administrators of Heriot's Hospital, against the creditors of Sir William Nicolson. The Lords found the old feu-duty of Freerton to the abbot and monks of Hollyrood-house was 12 merks yearly ; and that Forrester of Corstorphen, their vassal, having acquired in the superiority of it from the Ballandens of Brughton, who were lords and titulars of the erection of that Abbacy, (and which Brughton was excepted out of the act of annexation of kirk-lands 1587,) he came to have right to his own feu-duty. But the tenth act 1633, having annexed the superiorities of all kirk-lands again to the Crown, and only declared, that the feu-duties should be redeemable from the lords of erection, at ten years' purchase ; and the fourteenth act of that Parliament declaring, that where they have acquired in the property of these feus, they must pay the old feu-duty contained in the ancient infestments ; and that Brugh-