

1693. *February 24.* WHITE and CARMICHAEL, Executors-Creditors to BAILIE ARBUTHNOT, in Dundee, *against* ALEXANDER COWAN, there.

THE Lords thought that part of his oath, whereby he swore he was a partner in the bargain of victual with Bailie Arbuthnot, would have been an intrinsic quality, and would have needed no other probation, had there not been a prior declaration that this victual belonged to the said Bailie, which was cancelled, and that the inventory made by the tutors of Bailie Arbuthnot's children bore he acknowledged so much thereby; and so they ordained him to be examined, *ex officio*, upon the tenor of the said declaration, whereof there was an attested double yet extant.

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1693. *February 24.* LORD NEIL CAMPBELL'S RELICT, CHILDREN, and CREDITORS, *against* MR ARCHIBALD CAMPBELL, the Eldest Son.

THE relict, children, and creditors of the Lord Neil Campbell, against Mr Archibald Campbell, the eldest son: during whose absence out of the kingdom the Lords had named a factor to uplift the rents; and he, not only as apparent heir, but as going presently to serve heir, craved it might be recalled, and he admitted to the possession of his own estate, and offered to find the Earl of Broadalbane cautioner. On the one hand, it was urged, that the defunct's possession, *ipso momento* continued upon and passed to his heir; and though there was a factor named in his absence, yet, whenever he claimed his right, he behoved to be repossessed, by the principles of law. On the other side, the creditors being now in possession, it was hard to turn them out; especially it being a Highland interest, where they could not so easily recover the possession. Therefore the Lords struck a middle course, and refused the offer of Broadalbane as cautioner; he having stated himself already as their party, and being *potentior adversarius, et difficilis conventionis*; and that the factor should continue till they found some Lowland caution that will be more accessible to the creditors.

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1693. *February 24.* ELLIOT of PHILP *against* CHISHOLMES.

The Lords sustained the order of redemption, notwithstanding the nullities objected against it; and found it an odious design to carry away the irredeemable right of the land.

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1693. *February 24.* LADY BILLY, Petitioner.

THE Lords, on a bill, modified to the Lady Billy 800 merks of aliment for