

some moveables, made to him by his father, mentioned in his oath ; for, being pursued on the passive titles, referred to his oath, he had deponed, he meddled with none of his father's goods, save some contained in a disposition made to him in his father's lifetime, and which he had also then disposed upon, and which disposition bore no burden of his debts.

The Lords found, seeing they had examined him upon all, and that he confessed no intromission subsequent to his father's death, they would not now oblige him to produce the said disposition ; though, in the process before the Sheriff, they had, by their interlocutor, appointed him to do it.

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1694. *February 2.* ROSS of AUCHLOSSAN *against* The MARQUIS of DOUGLASS.

PHILIPHAUGH reported Ross of Auchlossan against the Marquis of Douglass, who was decerned to pay a sum contained in a bond due to Captain Ross, whereto Auchlossan had now right. The Marquis SUSPENDS, on this reason,—That he had raised improbation of the bond, the ground of the decret.

The Lords would not stop the charger's execution, but reserved the Marquis's improbation, as accords.

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1694. *February 2.* JAMES CLELAND *against* JAMES M'CULLOCH of PILTON.

HALCRAIG reported James Cleland, merchant in Edinburgh, against Mr James M'Culloch of Pilton. The Lords found Cleland's insisting on Mr James's promise of payment, did not hinder but that, in another process, he might pursue a cognition of the debt ; these being *diversa media*, and the passing from the one did not cut him out of the other.

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1694. *February 2.* THOMAS CRAIGHEAD *against* MARGARET CUNNINGHAM.

HALCRAIG reported Mr Thomas Craighead against Margaret Cunningham. By contract of marriage, she obliged herself to give him double of what she should bestow on any other of her nephews or nieces. And, for proving she had given a nephew 3000 merks, he produced a letter under her hand ; and from thence concluded, that she might be decerned to pay him 6000 merks.

ALLEGED.—The letter was not probative, and was elicited from her by this very pursuer, to trepan her, &c.

The Lords considered, that, among merchants, missives made great faith ; but, in regard of the circumstances here, they would not sustain it *per se* probative ; but allowed the pursuer, before answer, to adminiculate it, by proving the verity of the matter of fact averred in the letter, and the defender to prove the manner how it was procured from her, and what she designed by it.

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