

1694. *February 13.* GEORGE WINRAM of EYEMOUTH *against* JAMES JOHNSTON of WAMPHRAY.

THE Lords found the bond of 10,000 merks was moveable, and carried by Winram's arrestment, and that it fell not under Wamphray's apprising, albeit the bond carried a clause that the land should stand affected therewith; for that is not the habile way to make a right heritable. They also found the back-bond produced was not *ad idem*; and, therefore, being different, both in the sum and term of payment, the quality thereof could not affect this bond. And found, Wamphray's arrestment being on a dependence which had never yet taken effect by a decret, so that they were *in mora*, they could not compete with Winram's arrestment laid on upon a liquid bond. *Vol. I. Page 607.*

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1694. *February 13.* JANE LYLE, Relict of George Dawling, *against* MR WILLIAM CRIGHTON, Minister at Falkirk.

THE Lords found he had the benefit of prescription, introduced by the act 1669, that actions for maills and duties, not insisted in by the space of five years after the tenant removes, shall prescribe, unless it be proven resting by writ or oath; and that these actions shall prescribe, if they be not wakened once in ten years. This poor woman had suffered it to lie over from the 1676 till the 1692, in regard Mr William Crichton's circumstances, till then, were but low. But the Lords thought the prescription introduced by that statute took place whether the tack was verbal or in writ. *Vol. I. Page 607.*

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1694. *February 14.* LADY MARY MAXWELL *against* ROGER GORDON of TROUHEN.

THE Lords found him not accountable for the superplus duties above the annualrents of his wadset sum, from the date of the offer made; in regard he had a probable ground of thinking himself not accountable, in respect of the quality of his right; but only from the date of the Lords' interlocutor in January 1693. *Vol. I. Page 608.*

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1694. *February 14.* The LORD MONTGOMERY *against* The LAIRD of BLAIR, and other Heritors adjacent to the Commonty of the LARGS.

THE Lords found they had not the benefit of a possessory judgment; because their seven years' possession was not pretended to be of the property of the muir, but only of a servitude of pasturage forth of the same.

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