

again. And the Lords signed Mr Hamilton's commission; and he gave in a bond, with a cautioner, for his faithful counting; and gave his oath that he should exact no more but the dues allowed by the act. And, in regard it would be too burdensome for him to discharge it all in his own person, they permitted him to make use of servants under him, they being such for whom he would be answerable.

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1695. *November 8.* The MARQUIS of MONTROSE choosing CURATORS.

THE Marquis of Montrose compearing to choose his Curators *in præsentia*, the Lords, by the fault of their Macers, suffering the Lady Marchioness, his mother, and many with her, to enter within the inner bar, were necessitated to desire her to remove; and then caused signify it was the privilege of none to stand within but Dukes and Duchesses;—which my Lady obeyed. And the nomination being of his mother, William Hay of Drumelzier, Sir William Bruce, Graham of Urchill, &c. the Lords thought she, being clad with a husband, could no more be a curator than a minor could be, not having a person in law; though it was ALLEGED the Lady Wemyss, while married, was her son's curator (but that was not done before the Lords;) whereon the rest there present were sworn *de fidei*; and my Lady's nomination was forborne till it were better considered. Some ALLEGED curators were not obliged to swear but only in the presence of a judge, to sign the act of curatory. Then, a guinea being thrown in of instrument-money, the question arose, If the Clerks (who were so recently sworn to take nothing but their 4000 merks of salary, and that only from their Collector,) might meddle with it. Some affirmed, it being *qua* notary, they might. But these distinctions tending to evacuate the act, the Lords ordained it to be given in to the Collector; else clients, resolving to gratify the clerks, might take instruments on the pronouncing of every interlocutor or decret, and cast in two or three guineas, and so *fraudem legi facere* if this subterfuge were once permitted. And thus new laws and customs occasion many doubts.

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1695. *November.*—THE Lords called in the Dean of Faculty (Mr Hew Dalrymple,) and the Advocates, and caused read, in their presence, the articles of the new regulations relating to them; which are neither so strict as the former, in 1672, nor the present ones against the Clerks. Each have their turn. The old ones were mainly levelled against the Advocates, and the new against the Clerks. And the Lords intimated to the Advocates that they were to be careful to observe them in every point.

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1695. *November 12.* MARGARET MURRAY *against* ROBERT BURNET.

IN the reduction pursued by poor Margaret Murray, against Commissary Ro-

bert Burnet, writer to the signet, of a disposition imputed from her uncle, as granted *in lecto*,—he having objected against her title, that there was a nearer heir, and she offering to prove he was abroad, and an act of litiscontestation having been extracted thereon, and witnesses examined on a commission; but the same not being yet come in by the course of the roll, she, for abridging her process, craved Robert's oath of calumny, if he could deny that he knew he was dead. It came to be a debate among the Lords, If he was obliged now to give his oath, she having neglected to crave it when he first proponed the allegiance. Some thought an oath of calumny may be sought in any part of the process, before sentence, *ad lites amputandas*. And Hope, *Prac. tit. Of Oaths of Calumny*, seems to be of this opinion; though he says *olim* it could not be sought after probation. Others argued, Having elected the manner of probation by witnesses, she could not recur to his oath of verity, if the probation be either affirmative or negative; *ergo, multo minus* seek an oath of calumny; and that it was, the last session, refused in *Fotheringham's case* against the *Earl of Home*.

The Lords looked on the case as of general importance, and desired to be fully informed before they proceeded to a decision therein.

See Dury, 15th July 1622, *Rosline*.

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1695. November 14. MR MATTHEW CAMPBELL of WATERHAUGH *against* His CREDITORS.

MR Matthew Campbell of Waterhaugh, one of the forfeited persons in the late times, being imprisoned for the payment of some arrears of a life-rent-anuity due out of his lands, he presented a suspension and charge to be put at liberty on the *supersedere* contained in the 16th Act of Parliament 1695, suspending all personal execution against persons in his circumstances till Whitsunday 1696.

The Lords, having read the clause of that act, found it related only to debts where there was a principal sum and annualrents; and did not extend to this case, where there was no *sors*; and so, being *lex correctoria et a jure communi exorbitans*, it could not be drawn *de casu in casum*; and therefore refused the bill.

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1695. November 19. ROBERT DOUGLASS, Younger, *against* BAILIE CUNNINGHAM and OTHERS.

IN the bill of suspension given in by Robert Douglass, younger, soap-boiler in Leith, against Bailie Cunningham and others, of a decret of the Magistrates of Edinburgh, as justices of the peace, fining him in £100 Scots for opprobrious language against the Magistrates, and particularly against the said Bailie Cunningham, and ordaining him to give bond not to defame or trouble any of the Magistrates, under the pain of £50 sterling;—and he complaining that he was refused a sight of the libel, and that he could not, by a narrative they had