

1696. *November 10.* ROBERT MELDRUM, Petitioner.

MR Robert Meldrum, Advocate, gives in a petition to the Lords, representing, that he was nearest kinsman to Colonel Meldrum, who had stocked in the Republic of Hamburg's hands all the money he had gained in the Danish service; and there were some remote friends in the North intending to serve heirs there, and confirm executors to him: which, if past, would not only afford the town of Hamburg a good pretence to retain all in their own hands, seeing a competition amongst heirs and executors; but would also prove a reflection on the honour and justice of the nation, to see contradictory retours, and all proceeding on the oaths of fifteen sworn men; and would lay a foundation to waste and consume the whole effects in pleas. Therefore he craved that the Lords might direct a warrant to the clerks of the Chancery to issue out no brieves till the supplicant be cited and acquainted; and the same orders to the Commissaries before they serve an edict.

The Lords considered, That brieves ordinarily passed on a general and edictal citation against all and sundry, without the citation of any particular person, in respect the parties interested were not known; but where application was made, and it appeared there were several parties concerned, it seemed very reasonable they should be cited; and the Lords had done so in the case of *M'Culloch against Morton*, recorded by Spotiswood, *tit. de Hæreditar. Action.* But before they would give any warrant to the Director of the Chancery and Commissaries, they ordained the bill to be intimated, that any concerned may answer the same if they please.

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1696. *November 17.* ELIZABETH OGILVIE *against* PETER REID, her Husband.

ELIZABETH Ogilvie gives in a bill against Mr Peter Reid, minister, her husband, complaining, that she intended to raise a reduction of her contract, wherein the said Mr Patrick had circumvened her; and she had not *personam standi in judicio* without her husband's concurrence; and he refused against himself; therefore craved one Forbes, her nephew, might be authorised as her *curator ad hanc litem*, to carry it on. Mr Patrick ALLEGED he was most unfit, being the great incendiary and promoter of the discord.

The Lords found they had not the nomination, but only to interpose their authority; therefore granted the desire of the bill. The Parliament of Paris, and other courts in France, sustain such processes at wives' instances, *etiam reluctantante marito*, where he can give no just reason for refusing his concurrence.

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1696. *November 19.* JOHN CUMMING *against* FREDERICK HAMILTON.

PHESDO reported the debate in the count and reckoning between John Cum-

ming and Frederick Hamilton, merchants in Glasgow. The question being, if the general balance was converted to the use of the co-partners; and the presumptions on both sides not being sufficient, before answer, the Lords ordained John Cumming to produce his books; and, in case the affair were not cleared that way, allowed the Reporter to call the arbiters before him, and examine them upon the same.

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1696. November 19. JOHNSTON and STEIL *against* LUDOVICK WILLISON *alias* CALANDER of DORATER.

RANKEILOR reported Johnston and Steil against Ludovick Willison *alias* Calander of Dorater. It was an objection against the pursuer's active title, as being an adjudication of a moveable debt. ANSWERED,—Though the original bond be personal, yet it was made heritable by a comprising deduced thereupon. REPLIED,—That apprising being led by the tutor, he could not alter the destination of the first succession. DUPLIED,—Though that be true, yet there was no inversion here; because they were both heirs and executors, and had the right *jure sanguinis utroque modo*.

The Lords thought a tutor cannot, by taking a collateral accessory security, divert the channel of succession; yet here, both rights centering in one person, they sustained the title.

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1696. November 19. KENNEDY and MUIR *against* MATTHEW CUMMING.

IN the process, Kennedy and Muir against Matthew Cumming, a transaction made with a minor being reduced *ex capite lesionis*, the other party craved caution that they should not crave to be restored, because she was still minor, and might revoke what she had now done any time before attaining her perfect age of twenty-five.

The Lords thought they could not force men *satisdare*, where the law did not oblige them. *2do*. If there were a plain and enorm lesion, it cannot be presumed she would seek to be restored against this decret, and subject herself to the lesion; so there was no room for restitution, else one who was pursued to pay a debt owing to a minor might say,—I will not pay, because you might revoke this afterwards; at least, you must find caution to secure me against your craving reposition *intra annos utiles*.

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1696. November 20. ALEXANDER TAIT *against* CHARLES MURRAY of HALDEN.

RANKEILOR reported Alexander Tait, merchant, against Charles Murray of Halden. The reason of reduction of the Commissaries' decret was,—that they