

1693. *February 7.* ROBERT FALL, bailie of Dunbar, *against* The RELICT of JAMES FALL.

THE Lords repelled the objections against the decreet of general declarator of escheat, that it did not fully deduce the executions of the horning, and though the denunciation bore that the messenger's stamp was affixed, yet no vestige of any such stamping appeared; for the Lords considered that it was not a recent horning, and that their impression is slight, and soon wears of; and, therefore, found these were no nullities; seeing in a stronger case of an inhibition, on the 19th Dec. 1690, between *Doctor Sibbald* and *Mackell*, they found it no nullity after fifteen years, though there appeared no vestige of the stamp. But as to the *2d* point, they sustained this allegiance as relevant, that thir goods were not the relict's nor her second husband's, whose escheat they were declaring; but were truly the moveables of Embleton, her first husband, and belonged to his children, and were only detained by their mother, and made use of by her and her second husband. For though possession in moveables be a presumptive title, yet it is elided by a positive contrary probation, offering to prove the property belonged to another, and that your entry to the possession was by retaining them in the house after your husband's death. But found, that the wife's share of these goods, whether a third or a half, if not excluded by her contract of marriage, fell under the husband's *jus mariti*, and consequently under his escheat *pro tanto*.

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1693. *February 7.* GEORGE ROBERTSON, petitioner.

GEORGE ROBERTSON, merchant in Glasgow, complains, that he was pursuing one Pollock, a skipper, before the Admiral, who was like to assoilyie the said Pollock, whereby his cautioner *judicio sisti* would be liberated, he being bankrupt himself; therefore, craved the Lords would not advocate this maritime cause; at least, that they would give such directions to the Admiral-depute in his procedure, that the petitioner might not be wronged: as is usual in remitting causes to inferior judges, and particularly to the Commissaries of Edinburgh, in the case of divorces, (whereto they are sole and private Judges *in prima instantia*.)

The Lords refused the desire of this petition; for seeing they could not advocate maritime cases from the Admiral by the act 1681, therefore they would not officially intermeddle by prescribing any rules to him. *Vol. I. page 555.*

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1693. *February 8.* The DUKE OF QUEENSBERRY *against* WILSON of Spango.

THE Lords found the instructions produced by Spango, of 1600 merks, as an article of his discharge in the account, not fully probative that the money came to the Duke's use; and the question being stated, whether the Duke's oath or Spango's