

1663. *December 9.* NEILL MACNEILL of Dallilougart *against* COLIN CAMPBELL of Artenay, JOHN CAMPBELL of Artarich, &c.

NEILL MACNEILL of Dallilougart, serves and retours himself, in 1662, heir to his goodsire; then pursues Colin Campbell of Artenay, John Campbell of Artarich, and others, for exhibition and delivery to him of some writs, rights, evidents, securities, infestments, and charters of his lands, granted by the Earls of Argyle to his said goodsire, or any of his predecessors, of the said lands; (here the writs are deduced.) The defenders's procurators take a day to produce their clients, for giving of their oaths anent the points of the summons, and their having the said writs; which they failyieing to do, the term was circumduced against them, and they holden as confessed, and so decerned to exhibit and deliver the same to the pursuer, to be used by him as his own proper writs and evidents.

*Act.* Sir George Lockart, and Mr. Jo. Harper. *Alt.* Mr. Robert Sinclair, and George Mackeinzie. *Signet MS. No. 29, folio 10.*

1663. *December 10.* FRANCIS ARNEILL *against* JO. KER.

FRANCIS ARNEILL, merchant in Edinburgh, one of the owners of the good ship called Peter of Prestonpans, inputs and constitutes Jo. Ker, in Pans, their skipper and master thereof, to carry over in it some soldiers to Hamburg. At Leith, he (Arneill) buys 2000 weight of white biscuit for L.220 Scots; 500 lbs. weight of butter, L.135; 5 tons of drinking beer, with cask, L.150; 2 barrels of beef, L.26; 2 barrels of Lews herring, L.24; 104 lbs. weight of tobacco, L.52; 3 bolls oat meal, L.15; 22 pints of strong waters, L.24; amounting in all to L.546; and puts it therein. *In anno*, 1656, (which was the time of Cromwell's war with the Hollanders,) this ship, coming back from Hamburg, is taken by Captain Adrian Coats, and sold by him to Robert Fyfe and Jo. Delang, indwellers in Stravanger, and David Davidstone, in Copperwick, in Norway. Jo. Ker, skipper, coming home, by his ticket grants all these provisions to have been undisposed of, in the said ship (the 22 pints of strong waters only excepted,) even at their coming from Hamburg, and of their taking; and binds and obliges him, betwixt the date of thir presents and August 1658, to procure and purchase testificates under the hand of the said Captain Adrian, or his lieutenant or skipper, or some inferior officer of the said ship, or under the hands of those above mentioned that bought it, that the said victual and goods were in the said ship the time of her taking; or else, in case of failyie, to refund to the said Francis the prices mentioned in the particular account above written. This the skipper failyied to do: whereupon the merchant pursues him for to make payment to him of the prices of the said goods, conform to his ticket.

ALLEGED for the defender,—No process can be granted at this pursuer's instance, against the defender, for the 22 pints of strong waters, because the defender's bond or ticket libelled upon does not acknowledge the same.

REPLIED,—That he was content to restrict his summons to the goods contained in the said ticket.

ALLEGES, *2do*,—No process yet ; because [the defender] offers to prove that the goods above written were taken out of the said ship, as she was coming from Hamburgh ; and that by testificates under the hands of the parties mentioned in the ticket. Which allegiance the Lords found relevant, and assigned him a day for proving the same. At which day, he failyieing, the term is circumduced against him, and decret given forth, ordaining the said Jo. Ker to make payment of the prices of the said goods, as is contained in the pursuer's account homologated by him.

*Act.* Mr. William Hog. *Alt.* Mr. Robert Deans.

*Signet MS. No. 30, folio 10.*

1663. *December 11.* ISOBELL, &c. AIKENHEAD, &c. *against* CORNELIUS INGLIS of Newtonlies.

*IN anno 1639*, Patrick Inglis of Elphinston, as principal, and Mr. Cornelius Inglis of Newtonlies, as cautioner, by their bond, grant them to have borrowed from Mr. Harie Aikenhead, minister at North-Berwick, 4000 merks, which they oblige them to repay. The same two, *in anno 1647*, by another bond, bind and oblige them to content and pay to the said Mr. Harie 3000 merks, borrowed by them from him, by and attour the 4000 merks contained in the bond, 1639 ; (this clause it has.) Mr. Harie, in 1648, assigns the bond granted in 1647 to his son Archibald. He enters heir to his father on his decease ; and assigns to his sister Isobell, married to Ja. Rig, the equal half of the bond of 4000 merks, granted to his father *in anno 1639*, with the equal half of the penalty contained therein, and annualrents thereof, then resting owing, unpaid. He dies. The two sisters immediately confirm their brother's testament, and get themselves nominated executors to him ; then, with concurrence of their curators, Mr. James Pilans Regent, and the said Ja. Rig, spouse to Isobell, they pursue Mr. Cornelius to make payment to them of the said bond in 1647, of 3000 merks ; because they are confirmed executors to their brother, who was heir to their father ; yea, had an assignation thereto from his father, in whose favours the bond was granted : *item*, of 2000 merks, as the equal half of the bond of 4000 merks granted in 1639, to which they have right by virtue of their brother's assignations made thereof to them.

All which the Lords considering, they decern the said Mr. Cornelius to make payment of the sums called for.

*Act.* Mr. William Beaton. It's in absence.

*Signet MS. No. 31, folio 10.*