

1692. *December 23.* JAMES DUMBAR of Mochrum *against* ROBERT M'DOUGALL of Logan.

JAMES DUMBAR of Mochrum *against* Robert M'Dougall of Logan. The Lords, before answer, whether they would reponne Logan to his oath, being holden as confessed in the exhibition, ordained the writer and witnesses of the disposition made by Andrew Dumbar to Logan, to be examined on the tenor of it; whether the cause for which it was granted was for payment of the debt, wherein the said Andrew, as principal, and Mochrum and Logan, as cautioners, were bound to the Earl of Galloway: for the Lords did not regard the declaration and discharge given by Alexander Dumbar to Logan *ex post facto*, being then bankrupt; and it looked very suspected, that Logan produced neither the principal, nor copy of that disposition; so that he had misapplied the price and effects he got to pay the Earl of Galloway's debt, towards the payment of other cautionaries wherein he also stood engaged for Alexander Dumbar.

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1692. *Dec. 21 and 24.* GRAHAME, Tutor of Gorthy, *against* SIR ROBERT MURRAY of Abercairney.

*Dec. 21.*—IN Grahame tutor of Gorthie's declarator *against* Murray of Abercairney; the Lords found, though a decret of perambulation was never so null by intrinsic nullities, yet the party could not *via facti* remove the marches; such reverence being due to a Judge's sentence, till it be reduced or annulled, *pro veritate habetur*. But if it was palpably defective, then consideration might be taken thereof, in the contravention of the lawborrows, by an abatement or mitigation of the penalty; but allowed Abercairney and the tutor to adduce what farther probation they pleased.

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*Dec. 24.*—The Lords advised the probation adduced by the tutor of Gorthy, of Sir Robert Murray of Abercairney's contraventions, mentioned 21st current; and in regard the decret was informal, therefore they would not modify the full penalty of the act of Parliament, *viz.* act 166, 1593; but modified the half of the fine of a great Baron, (in which rank Abercairney was,) *viz.* L.500 Scots; and reserved the modification of the tutor's damages to the conclusion of the cause, and the advising of the new probation to be led by either party.

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1692. *December 27.* DOROTHEA LAWSON *against* DUFF of Drummoir and DUFF of Braco.

DOROTHEA LAWSON, an Englishwoman, *against* Duffs of Drummoir and Braco. The Lords found her liferent-bond of provision, with her seazine, though unregis-

trated (by her husband's fault,) gave her a sufficient interest and title to pursue a reduction and improbation of their rights upon the lands. *Vol. I. page 539.*

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1692. *December 27.* JOHN RAMSAY *against* DOUGALL of Nunlands and PENMAN.

MR. JOHN RAMSAY, advocate, against Dougall of Nunlands and Penman. The Lords ordained the principal discharge, given by Ramsay to Nathaniel Fife, of his tutor-accounts to be produced; and granted an incident diligence for recovery thereof. And also found any acknowledgment or acquiescence, that Penman had made in the count and reckoning to sundry articles of the charge, could not hinder his assignee to quarrel the same; though the assignation was given by him *ante redditas tutelæ rationes*, because Penman being then bankrupt, no declaration of his could wrong his assignee. *Vol. I. page 539.*

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1692. *December 28.* ROBERT STEWART, Minister at Ballquhidder, *against* the MARQUIS of ATHOLE and his other Parishioners.

MR. ROBERT STEWART, minister at Ballquhidder, against the Marquis of Athole and his other Parishioners. The Lords were fully convinced that he was a very bad man, and unworthy of the holy function; but found the church not vacant on the grounds alleged; for as to the 132d act, 1584, the four Sabbath-days absence be declared a cause of deprivation in a minister, yet, that was not yet cognosed by any church-judicature against him; and though he was in arms, yet he had taken the benefit of the indemnity; and as to his letter to the Lord Murray, patron, the Lords did not find it a formal demission of his charge, and so preferred him, notwithstanding some of them had paid the patron's collector, upon a destination of this stipend to a school in the parish, for the Lords found it not vacant. *Vol. I. page 539.*

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1692. *December 28.* CAIRNS *against* CAIRNS and PATRICK STEIL.

CAIRNS contra Cairns and Patrick Steil. The Lords sustained the widow's exonerations, being for privileged debts, as house-mails, servants-fees, medicaments, funerals, &c. unless they condescend on some defence they had, if they had been cited thereto; and repelled that defence, that she had paid without sentence; and found she needed not abide a decret for privileged debts of that nature. *Vol. I. page 539.*