

fore, they declared they would hear him in June, if he would find caution for his intromission with the rent 1692, and remove at Whitsunday, and cede his possession to the creditors ; and if not, then reduced his right.

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1693. *February 23.* PATRICK HALYBURTON *against* ALEXANDER ABERCROMBY.

In the pursuit, Patrick Halyburton, bailie of Edinburgh, against Alexander Abercromby, vintner, the Lords sustained this defence of compensation,—That you are debtor to me, in so far as you have drawn a precept on the Duke of Hamilton for an account, and made it payable to me ; I presented it, and the Duke refused, and I protested : though Bailie Hamilton alleged, you should have pursued the Duke. For the Lords found him liable in no farther diligence but to protest for non-acceptance.

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1692 and 1693. The EARL of TWEEDDALE, Chancellor, *against* WILLIAM ERSKINE.

1692. *November 16.*—In the competition between the Earl of Tweeddale, Lord Chancellor, as lord of the regality of Dumfermline, and admiral within that bounds, and Mr William Erskine, depute to the admiral, anent the right to a whale that ran in at the port of Limekilns ; the Lords, *ex officio*, ordained either party to adduce what probation they pleased, for instructing who first attached the whale and attained the first possession of it. Skeen, *de Verbor. Significat. voce Wreck*, shows, by the English law, whales are *inter regalia*. And the Chancellor repeating a probation, led before the Lords of Secret Council, that he apprehended the first possession, the President thought that it might be advised by the Lords ; but others were of opinion, that such of the witnesses as are alive ought to be reëxamined before the Lords. Which is true *quoad* probation taken by the sheriffs and other inferior courts ; but not as to supreme judicatories, where the brocard, *testibus et non testimoniis est credendum*, takes not place.

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*December 6.*—In the question between Mr William Erskine and the Earl of Tweeddale, about the whale, mentioned 16th November last, the Lords having considered the reference of the Privy Council, they would not permit the question of possession to the point of right, but would take them both in together ; especially seeing they proponed *peremptoriè* on the Duke of Lennox's right of admiralty, from whom Sir William Erskine derived a deputation by progress ; and that it should be found better than Tweeddale's.

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1693. *January 26.*—The debate between the Earl of Tweeddale, Lord Chancellor, and Mr William Erskine, about the whale, mentioned 6th December 1692, was advised ; and the first question was, Whether they should consider the point of right, or possession, first, or if they were to take them jointly and