

complexly. And the Lords considered, that they had forced them to debate the point of right; therefore, they resolved to begin with it. But then it occurred, they had not an *idoneus contradictor* in the field; for the Duke of Lennox being heritable admiral, and not called, they could not judge on his right, on the partial production made for him by Mr William Erskine, without his special mandate, (being out of the kingdom,)—*viz.* the king's letter in 1628, which was never perfected; and the ratification of Parliament in 1633, which gives no new right: therefore, all they could do was to find the Chancellor's right the best, for any thing yet seen. But this preference being of no value, they were allowed to be farther heard; and it was argued, whether such offices could have the benefit of a possessory judgment; for though such escheats occur but rarely, yet they had the daily exercise of the jurisdiction, by other acts of holding courts, judging prizes, granting passes and cockets, &c. *Vol. I. Page 551.*

*February 17.*—In the case between the Earl of Tweeddale, Chancellor, and Mr William Erskine, about the whale, mentioned 26th January 1693, the Lords having advised the acts of possession adduced for the Chancellor, to prove he had exercised a jurisdiction of admiralty in his lordship of Dunfermling, and interrupted the high admiral's right; the Lords found his deeds of possession proven: though it was alleged they were, by his rights, as lord of the regality. For the Lords considered, where a man has two titles, the possession is always to be ascribed to that whereunto it most naturally belongs; and so found these fines and acts of Court were as admiral. This carried only by the President's vote. *Vol. I. Page 562.*

*February 23.*—The Lords having advised the value of that whale, controverted between Mr William Erskine and the Chancellor, as mentioned 17th current, they decerned for 700 merks, as the price the Chancellor had sold it at; but with this quality, that if Mr William instructed that he got no more for it at the roup but 500 merks, they restricted it to that price.

*Vol. I. Page 564.*

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1693. *February 23.* The DUKE of HAMILTON *against* JAMES YOUNG, his Chamberlain.

THE Lords found the mill-rent differed here from land-rent, and that the discharge of his accounts, which he got in 1683, did not extend to, nor comprehend a discharge of his intromissions with the rent of this mill for the year 1684; though it was alleged, that what was grinded in the year 1684 behoved necessarily to be but the corns of 1683, and so it was a year behind. Which the Lords repelled, having considered his entry and the custom of the place.

*Vol. I. Page 565.*

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1693. *February 23.* DAME MARY ERSKINE, Lady Ardoch, *against* SIR PATRICK NISBET of DEAN, the LADY ROSLINE, and COLONEL RAMSAY.

In the report, Dame Mary Erskine, Lady Ardoch, *against* Sir Patrick Nisbet

of Dean, the Lady Rosline, and Colonel Ramsay,—the Lords, before answer, appointed trial to be taken anent the offer made to the said Lady of her legacy, and her refusal of it ; as also, of her being then minor, &c. *Vol. I. Page 565.*

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1693. *February 23.* CHARLES FLEMING *against* HAY and NISBET.

THE Lords preferred the first disposition made by Mary Sinclair, relict of Captain Ross, to Nisbet ; and found her a creditor by the clause of absolute warrandice, and so had sufficient interest to reduce the posterior disposition made to Fleming ; but found the first, being lucrative, was burdened with all her debts. *Vol. I. Page 565.*

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1693. *February 24.* IRVING of FEDDERET *against* ROBERT and WILLIAM KEITHS.

THE Lords found, seeing the charge was at the instance of Mr William, That the reasons of suspension for setting Fedderet at liberty, being only against his brother Lentush, they could not operate against Mr William, unless he first confessed, upon oath, that it was to Mr Robert's behoof : but, in respect of Lentush's declaration, that all his reason for keeping him in prison, was, because he disturbed Lentush's possession, and would not cede his own possession of the lands of Loanmay ; therefore, they allowed him to be set at liberty, he finding caution not to disquiet Lentush, but to cede his possession *ut supra.* *Vol. I. Page 565.*

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1693. *February 24.* ROBERT MACCALLAN *against* The MAGISTRATES of AYR.

THE Lords adhered to their former interlocutor ; and found, That his infestment, though it was in the nolt-fauld, yet not bearing to be in the market-place, it did not hinder the town of Ayr to alter their market-place : albeit he had immemorial possession, and that the whole cattle came there, and paid custom ; which was only *actus meræ facultatis*, and arbitrary to the town to continue it in that place, or transport it elsewhere at their pleasure ; even as it is with the markets of Edinburgh, where the neighbouring heritors of the flesh-market, and others, get their houses much higher and better set ; this would not hinder the altering and taking them to another place, though the adjacent tenements would suffer prejudice thereby. And, on the other hand, it was urged, That a dubious and a general charter, bearing the nolt-fauld, with all its pertinent, might be explained and enlarged by a long custom and possession, and might introduce such a servitude ; especially seeing he bought the ground at a dearer rate upon that account. *Vol. I. Page 565.*