

1698. *November 18.* ENSIGN LIVISTON and CHARLES GRAY *against* MACGIE of SLOGARIE.

ARBRUCHEL reported Ensign Liviston and Charles Gray, merchant in Edinburgh, against Macgie of Slogarie. Hay, younger of Linplum, having in a sudden quarrel killed Captain Liviston at Glasgow, in May 1696, the magistrates secured the Captain's goods upon inventory; but he having been married to Macgie of Slogarie's daughter, the father-in-law intromitted with the whole goods without any authority, and disposed thereupon. His brother, and Charles Gray, as executor-creditor confirmed to him, pursue Slogarie for vitious intromission.

ALLEGED,—He had a probable title to intromit, because it was believed his daughter was with child, and so it was reasonable to secure the Captain's effects for the use of his lady and child; and seeing it proved otherwise, he was willing to restore such of the goods as are extant in specie; but he cannot be liable for the value of these which are either deteriorated, as his wearing clothes, &c. or dead since, as his horses, &c. seeing that has happened without any fault of his, and he being only *debitor specierum, res perit suo domino*.

ANSWERED,—His intromission was predoneous and unwarrantable, seeing his daughter was but four months married to the Captain; and if there had been any expectation of her being with child, he should have applied to the magistrates, and intromitted by their authority.

The Lords found this intromission not necessary; and therefore found him liable for the price of such goods as shall be proven he meddled with and does not offer to restore in as good case as they were at the Captain's death.

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1698. *November 19.* GEORGE DENNISTON *against* JOHN CHEISLY.

GEORGE Denniston, writer in Edinburgh, having exhibited a complaint against John Cheisly, Writer to the Signet, that in a printed petition he had injuriously defamed him, by charging him with a cheat and villany, as rescuing one Scot out of the messenger's hands, and saying it was his usual practice; and now, after probation, it is found, there was no caption there at the time, and so he could not be legally detained; therefore the Lords fined the said John in 1000 merks to the poor's box, and ordained him to crave Mr Denniston pardon, and sent him to prison till he paid it. The *palinodia* and retraction is little worth, being frowardly done for the most part.

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1698. *November 25.* JAMES ARCHIBALD *against* THOMSON.

PHEUDO reported James Archibald, portioner of Balbrekie, against Thomson. Having married two sisters, heirs-portioners, they divided the lands equally; but James Archibald having a latent infetment of annualrent, which he had