

1693. *January 31.* WILLIAM BELL *against* The MAGISTRATES of Linlithgow.

WILLIAM BELL, town-clerk of Lithgow, against the Magistrates and Town-council thereof. The hail Lords were clear to annul the act of deprivation as informal, and a summary proceeding without probation. But some thought the malversation charged on him relevant to infer deposition, if it were true. Others, that it might oblige him to repair the Town's damage, by his being the occasion of heightening their excise; but that every fault was not like Draco's law, to infer loss of an office provided during life. Some were for turning the decret into a libel, and hearing the Town on this, or any additional articles of malversation against him. But the generality found the deprivation illegal, and reponed him again to his place; and would not so much as sustain them as a libel, nor to add their other grounds, but remitted them to pursue him *via ordinaria*, if they had a mind, by way of process. The next question will be, if he can claim the intermediate profits and emoluments of the place since his deprivation, for summary removing of servants or clerks without a process. See 14th February, 1665, *Sir William Thomson against the Town of Edinburgh*, if it may be done *de plano sine strepitu et figura judicii, per modum simplicis quærelæ*.

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1693. *January 31.* JAMES PRINCE *against* WILLIAM SOMMERVELL.

THE Lords did not regard that objection against the decret of cognition of Sir Magnus Prince's debt against the heirs of Edward White, the clerk of his brewery, before the Commissaries, that it proceeded only upon the count-book, and that the *idoneus et legitimus contradictor*, viz. Edward's wife, and her heirs, to whom Edward, wanting children, had disposed all his means and effects, were not called thereto; and that only three or four auditors, named by the bailies to peruse the accounts, subscribed the report; for they thought he was obliged to cite none but the nearest of kin to White, his debtor. But in regard that Sommervell had a clear and evident interest, and had never yet been heard how the said account had been made up, the Lords allowed him yet to condescend on this prejudice and lesion he sustained by that decret of cognition, before they would loose or lay it open, or decern the parties to enter into the labyrinth of a new account, Sir Magnus being dead, who best knew how to clear it.

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1693. *February 1.*

THE Lords, upon an objection made against a seasine, that it had only two witnesses, found it no nullity, and that four were not necessary, else many seasines