

1694. *January 10.* M'LEAN *against* BECK and OTHERS.

HALCRAIG reported Mr M'Lean, dancing-master, and master of the revels, against Beck, and the other musicians who have erected the concert of music; craving that they ought to be licensed by him, before they could set up and exact money; seeing his office was to inspect and regulate all games and sports, and see that nothing immoral or indecent should be allowed.

The Lords, having perused M'Lean's gift, they found music indeed contained in it, but that it was inserted in that clause anent tragedies, comedies, and other theatrical scenes where music is always used, as also at puppet-plays; but that the liberal science of music itself was not comprehended in his gift: especially seeing musicians were not subject to the master of the revels abroad, where that place was better known than with us; and that he only used it to drain money from them, without restraining immoralities, if they paid him.

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1694. *January 10.* ANDREW HOME, Merchant, *against* JAMES STEELL, Vintner.

ARBUHEL reported Andrew Home, merchant, against James Steell, vintner, for a spuilie of some goods out of his house, and whereon he craved his oath *in litem*. The defence was, The goods were my daughter's; and the marriage between you and her dissolving within year and day, their property returned again to the father; and having the keys, they might summarily intromit with their own, without hazard of a spuilie: and cited *30th January 1632, Maccartny*; (but in that case there was a disposition:) and *25th July 1676, Maxwell against Dalswinton*; where the having of keys presumed property, except against masters and parents.

The Lords thought, if this was the wife's cabinet, wherein she laid up her *paraphernalia*, her mother's meddling therewith was no spuilie, unless he will offer to prove, that he likewise made use of that cabinet to lay up his money and goods therein; in which case they would sustain it as a spuilie, and give him his *juramentum in litem*; but only to infer the restitution, or the value, and not violent profits.

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1693 and 1694. SIR JAMES COCKBURN *against* The LAIRD of LINTHILL.

1693. *January 18.*—THE Lords found Sir James Cockburn, having the rents of the lands of Whitcheater in his hands, for the three years he possessed, he could retain no more but the yearly annualrent of Crawford's sum, as it fell due for these three years; and that Home of Linthill behoved to come in *secundo loco* for the annualrent of his sum, whereon he craved compensation, as assignee to the Lady Lumsden's liferent on these lands of Whitcheater, as being the next preferable right; and that Sir James Cockburn could not exact the rents, nor

ascribe his possession to the annualrents of Crawford's sum, for years subsequent to the 1681, which was the last year of his possession, though the compensation was not proponed nor applied by Linthill till 1687. And the Lords did not regard whether Linthill intimated his right before, or whether Sir James knew of it, seeing she had a decret of poinding of the ground on her infeftment.

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1694. *January 10.*—Sir James Cockburn of that ilk, against Home of Linthill, mentioned *supra*, 18th January 1693. The Lords thought the intimation made of the assignation to Sir James was not sufficient to put Douglas of Lumsden, the debtor and heritor, *in mala fide* to pay these years assigned to Elizabeth Lyell, the lady, and Linthill's cedent: but laid hold on that allegiance, that the lady's discharge produced did not proceed upon payment of money for these years assigned; but the assignation was held and reputed as payment, and so allowed in the count betwixt them. But they would not admit this to be proven by the writer and witnesses in the discharge, but only by Lumsden's oath, (to whom the discharge is granted;) but permitted them to confront him with the lady and the witnesses, to refresh his memory, at the time of his deponing, if they thought fit to cite them for that effect.

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1694. *January 11.* SIR WILLIAM KER *against* DAVID HEPBURN OF HUMBIE.

CROCERIG reported the case of Sir William Ker, Director of the Chancery, against David Hepburn of Humbie, on a decret, holding him as confessed upon a promise of payment. The generality of the Lords thought the grounds urged by Humbie for purging his contumacy, and being reponed to his oath, very plausible, *viz.*—That, at the first term assigned, he was indisposed, and keeping the house, though he was recovered before the circumduction; that the act was put up in the minute-book, not in Sir William's name, but in Mr John Slack's name, and that, before the decret, Mr John Slack was dead, who was the principal pursuer; albeit there was also a conclusion in the summons at Sir William's instance, that he ought to be relieved of that cautionary: yet they thought fit to delay the taking in the report, till it was tried if the parties would settle in the terms of the transaction Sir William had made with Slack, whereby he had componed the debt for near the half; seeing he was the principal debtor's brother and apparent heir, and only pled that his niece, the Lady Livingston, as heir of line, was not first discussed, and that his brother was interdicted; which did not seem so favourable a case.

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1694. *January 12.* GEORGE HOME OF KYMERGHAM *against* The EARL of HOME.

THE Lords advised George Home of Kymergham's cause against the Earl of Home, wherein the Lords adhered to their former interlocutor, 16th of February 1692, finding that the posterior articles were an innovation of the first contract; and though the Earl was at first personally bound for payment of the annuity