1694. *November* 13. EDGAR *against* CARNEGIE of BALNAMOON.

IN Edgar's improbation, against Carnegie of Balnamoon, they found the maxim, *Nunquam concluditur in causa falsi*, was in favours of the defender, and not the pursuer; and that, having abidden simply by the writ, he needed not condescend *quo modo* he came by it. And they refused to reëxamine the witnesses who had already deponed; but permitted him to adduce such as had not been already examined, providing it did not hinder the advising of the cause.

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1694. *November* 14. WILLIAM MENZIES of RAW, Petitioner.

WILLIAM Menzies of Raw, apparent heir to Major Menzies, desired the Lords' allowance to uplift the rents, till he might deliberate whether he would enter or not, on his finding sufficient caution to make them forthcoming to all parties having interest, that they may not perish *medio tempore*. The Lords, minding they had refused it last session to Wood of Bonnyton, and that it was of dangerous consequence to put apparent heirs once in possession, (though on caution,) they refused this bill, though the *annus deliberandi* was yet running. If he had applied for having a factor named, or to have the rents sequestrated in a neutral party's hands, the Lords would have considered it.

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1694. *November* 14. ANN BAIN, Petitioner.

DAME Ann Bain, relict of Sir John Gordon of Embo, craved the Lords would authorise her and some friends to inspect and inventory her children's writs, &c. in regard the tutors nominated refused to accept, and, by delay, things would go into confusion. The Lords refused to meddle; seeing the tutor-in-law, when the nomination failed, might serve, and then intromit.

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1694. *November* 14. The EARL of NORTHESK *against* KINFAUNS' CREDITORS.

THE Earl of Northesk gave in a petition against the Creditors of Kinfauns, that they should expunge his lands out of their adjudications. The Lords found creditors might adjudge all lands wherein the debtor stood infeft, or had right to the property by a disposition; but, if it was only an infeftment of annual-rent, or for relief, or the like, in that case they should not insert the lands *per expressum*; but it was sufficient to adjudge from the debtor all right standing in his person, or any claim he had to such lands in general. For, though it be hard to put creditors to instruct their debtors' rights, which they have not yet

recovered, so, on the other hand, it were absurd to put them to adjudge any man's lands who they suspected stood obliged to their debtor. But the foresaid general clause salves both these inconveniencies. *Vol. I. Page* 643.

1694. *November* 15. BAILLIE of JERVISWOOD *against* The DUKE of GORDON.

RANKIELER reported the Duke of Gordon's bill of suspension against Baillie of Jerviswood, 1*mo*. That he was not bound to receive him by precept of *clare constat* but with that clause *salvo jure meo*. 2*do*. That, having got his lands, both property and superiority, erected into a regality in the late times, he must design his lands as lying within his said regality. ANSWERED to the *first*,—That the Duke ought to condescend on his right; especially since it is insinuated that he thinks the gift of forfeiture is yet sufficient, notwithstanding of the act rescissory. To the *second*,—The regality being obtained the time of the charger's forfeiture, it must fall with it. REPLIED,—No superior is bound to condescend; because there may be casualties of the superiority, or recognitions. And, 2*do*. He having impetrated the erection, not as proprietor, but as superior, it must subsist.

The Lords sustained both the reasons; and ordained the charter to bear both the clause of *salvo jure*, and mention that they lie in such a regality.

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1694. *November* 15. ROBERT ROW *against* CAPTAIN JOHN CAIRNS, Brewer.

THE Lords sustained the reason of suspension,—That the Sheriff had committed iniquity in dividing his oath, whereby he declared he was indeed trusted for Row's sum as well as his own, but that he did not become debtor for it, nor undertook to do more diligence for it than for his own; and, though he had him once under caption, yet he did let him go, because Row refused to bear part of the charges; and therefore turned the decreet into a libel, unless he would subsume that the debtor turned insolvent afterwards, and that he was in a better condition then; and if he had been detained he might have gotten his money. For the Lords considered he was but a *nudus depositarius*, and had lost much more of his own, and did undertake no diligence; and therefore suspended the letters, unless they would prove damage and prejudice in his dismissing him in manner foresaid. *Vol. I. Page* 643.

1694. *November* 15. RAMSAY of IDINGTON and FAIRHOLM *against* The LORD MORDINGTON and his CREDITORS.

IN their concluded cause it came to be debated, Whether the contract betwixt old Dr Sibbald, and Anna de Malvairn, his wife, proved that their separation was by a judicial sentence, seeing it only bore it *narrativè*; and if their asser-