

1703. *January 8.* KER of MORISTON *against* SWINTON of MERSINGTON.

ANDREW Ker of Moriston being to pursue Major Swinton of Mersington for £1000 Scots, contained in his bond, and which was omitted in the confirmed testament before the Commissary of Lauder, and which he could not get now eiked, in respect the said commissariot was now vacant by the decease of Mr Alexander Home, last commissary there; and therefore craving the Lords, as the great consistory of the nation, would provide some remedy for that defect of jurisdiction:

Some thought he might be remitted to the Commissaries of Edinburgh, and their confirmation declared effectual; but this was thought iniquous, to give one commissariot the profits and emoluments truly belonging to another; therefore they granted him their license and warrant to pursue the said debt; he giving bond and caution to eik and confirm it before the Commissary of Lauder, so soon as the place should be filled. And if Mersington should object his want of a title through not-confirmation, the Lords would repel the same in respect of the obligation foresaid, to confirm in his own jurisdiction when the place comes to be filled.

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1703. *January 12.* SIR WILLIAM BRUCE of KINROSS *against* SIR GEORGE HAMILTON and OTHERS.

SIR William Bruce of Kinross, being charged with horning to give forth his decreet-arbitral on a submission made to him and others by Sir George Hamilton, Jerviswood, &c. on the one part, and Alexander Bruce, son to Broomhall, on the other; and being denounced thereon, and executions being given in to be registrate, he applies by a bill to the Lords, craving, Seeing it was too hastily and precipitantly done, that they would grant warrant to Mr Mitchelson, keeper of that register, to score the same out of his minute-book, and discharge him to record it; which he alleged had been frequently practised.

It was ANSWERED,—Whatever had been done before the 14th Act of Parliament 1693, yet, since that time, the Lords neither had nor could give any such warrants, either to vitiate and delete registers, or even to write on the margin that the same was recalled; and the only regular method and remedy now left was to take out the gift of their own escheats; as was lately done on application made by *William Nisbet of Dirleton*, and others, denounced for absence from assizes.

The Lords refused to delete the same out of the books, and put them to take the gift of their own escheats. The Lords, by plurality, refused to interpose with the keeper of the register, or to discharge the booking; and left Sir William to his own way.

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