

1692. *December 6.* EDGAR of Wedderly *against* THOMAS CALDERWOOD.

IN the complaint pursued by Edgar of Wedderly *against* Thomas Calderwood, in Dalkeith, for refunding his damage sustained by giving order to a messenger to poind him after a sist, upon a bill of suspension; which was most unwarrantable, and found so by a decreet of secret council against the messenger; and whereto the said Thomas was also called, and a decreet passed against him, on a circumduction of the term, for not deponing on his giving a commission to the messenger to poind after the stop; the Lords, upon a bill of suspension, finding the informality of the said decreet, they opened it, and having turned it to a libel, they reponed him to his oath, if he employed the messenger. But the pursuer declaring he would prove it *aliunde*, the Lords advised the decreet of Council, whether it was *res judicata* or not; and found, though Thomas Calderwood was neither condemned nor assoilyied in the decerniture, yet he was convened in the process, and it was expressly libelled, that he should take the horning out of the register, and refund Wedderly's expenses for his illegal poinding; and so, though it was not *res judicata*, yet Calderwood had the *exceptio litis contestatae*, that it was tabled before the Privy Council, by the pursuer himself, and so could not be taken away till it came to a sentence there. So Calderwood was assoilyied *ab hac instantia* before the Session. And in regard he could not get the suspension past without consignment of the sums, the Lords allowed him now to get up his consigned money.

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1692. *December 6.* THE DUKE OF HAMILTON *against* LORD BARGENY.

THE Duke of Hamilton *against* the Lord Bargeny, for the lands of Greenlees. The Lords were not clear to sustain the Duke's title to these lands, on the instrument of resignation, made by Sir James Hamilton to Marquis James in 1624, that being only *assertio notarii*, nor on the accounts of the rentals of the family of Hamilton, where thir lands are in the charge, both before the registration and after, and in some places bears to be in my Lord Bargeny's good-sire's hands, as if these great families kept still in their rentals the lands sold off, but in the discharge mentioned who had them; and that any right Bargeny retained was only the feu-duty, and his infetment was in trust. The Lords declared they would hear the parties farther on these points.

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1692. *December 7.* ALEXANDER HAY'S CHILDREN, DYKES, and INGLES *against* HAY and BETHIA LOW.

THE children of Alexander Hay, and Dykes, and Ingles, their husbands, against Hay, his heir, and Bethia Low, his relict. The daughters reclaimed against a former interlocutor in June 1692, whereby the Lords found a