

1697. *July 30.* JAMES STUART of CHRYSTWAL *against* The LAIRD of LAMMONT and OTHERS.

KENNEDY and Macilturner, having subscribed witnesses to a messenger's execution on a summons, raised by James Stuart of Chrystwal, against the Laird of Lammont and others, and the execution being improven as false, and the witnesses acknowledging, under their hands, that, though they subscribed at the messenger's desire, yet they did not see the thing done :---

The Lords ordained them to be carried, on a market-day, to the Tron, betwixt eleven and twelve forenoon, and to have their ears nailed thereto, and to stand there with a paper on their breast; and then to be banished. Wherever the punishment of falsehood comes to be mitigated by their ignorance, ingenuous confession, or other circumstances, to be *infra mortem*, in such cases the Lords inflict the punishment themselves, without remitting them to the criminal court. See Dury, *14th July 1638, Dunbar against Dunbar.*

*Vol. I. Page 790.*

1697. *November 9.* The EARL of SELKIRK, Lord Register, Petitioner.

The Earl of Selkirk, Lord Register, gave in a petition to the Lords, representing that Moncrieff of Mornipae, clerk to the admission of notaries, being deceased, his relict and servants had the records belonging to that office, and they might be embezzled, *medio tempore*, before another were placed; therefore craved the Lords might appoint the Ordinary upon the bills, or any other they pleased, to go where the said registers lie, and cause secure them, and take the relict's and servants' oaths that there were none of them abstracted or put out of the way.

The Lords remembered this was usual; and they had lately done it in the case of the register of hornings, vacant by the death of George Robertson; therefore they granted the desire of the bill.

*Vol. I. Page 791.*

1697. *November 11.* DR STIRLING *against* SIR ROBERT STEWART of ALLANBANK.

DOCTOR Stirling, son to George Stirling, apothecary, pursues Sir Robert Stewart of Allanbank, for an account of drugs, extending to £5 sterling; and, referring the same to his oath, Sir Robert depones,---That George was indeed his ordinary chirurgeon and apothecary at that time, and thinks there might have been drugs furnished to his family, but can say nothing upon his own knowledge of the particulars whereof the account was made up, whether they came to their use or not; but depones he gave his deceased wife money to pay his accounts in town, and particularly this among the rest; and that his wife said she accordingly paid them, and he believes this was so paid among the rest.

The Lords were perplexed what to make of this oath; for he did not say that

his wife told him she had paid this account in particular, neither had she any discharge of it; so the money destinate to pay George Stirling might have been applied another way. Yet the Lords considering it was not pursued within the three years, (as the Act of Parliament 1579 bears,) and that he did not confess it was resting owing, therefore they found his oath did not prove the debt; and assoilyied: for they thought gentlemen had little more security of the payment of most of their accounts than that they gave their ladies or servants money to pay them, and had their assurance it was so applied; and if this was insecure for artificers, they had a remedy, either to get their account subscribed within the three years, or else pursue within that time.

*Vol. I. Page 792.*

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1697. *November 23.* SIR DONALD BAYNE of TULLOCH *against* SIR ROBERT GORDON of GORDONSTOWN.

IN an improbation between Sir Donald Bayne of Tulloch, and Sir Robert Gordon of Gordonstoun, certification is craved against a bond dated in 1640, which had been the ground of an apprising, and whereof an extract was only produced, and, after search, the principal bond could not be found, as appeared from a testificate of the clerks, and which coincided with some of those years whereof the warrants were drowned at sea, coming from England in 1661. On the one hand, a bond may be forged, and, after registration, taken out again with a little money; and, if the extract be sufficient to satisfy the production in an improbation, there is a foundation laid to encourage all knavery. On the other hand, what can the lieges do more but give in their principal writs to the Register; and, if they be lost, either by casual accidents or the faults of the keeper, shall the party ingiver suffer for that?

The Lords, in this case, abstracted from the general point, which is of great moment; but inclined to refuse certification here, in regard the debt was old and much diligence led upon it, and never quarrelled till of late, which took off the suspicion of its being false. Yet, in regard it was alleged that the debtor had been charged with horning on this bond in his lifetime, which is yet a farther adminicle of its verity, they ordained the horning, before answer, to be produced, which would tend yet more to clear the affair. See certification refused against principal bonds, in a similar case, *20th November, 1666.*

*Vol. I. Page 796.*

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1697. *November 24.* ANDREW BOWMAN *against* KER of LITTLEDEAN.

ANDREW Bowman pursues Ker of Littledean for a sum contained in his father's bond, granted to one Cranston, to which debt Bowman has now right.

ALLEGED for Littledean,—That Cranston, in farther security and payment of this sum, got an assignation to a tack-duty payable by sundry tenants to Littledean, and offered to prove his intromission by virtue of the tack and assignation