

er did attend the said vessel for the space of eight weeks, and did hire sailors, and was ready to fulfil all the other parts of the said contract; likeas by the instrument produced, he made offer to do the same.

Which reason and answer the said Lord having considered, he ordained before answer the suspender to prove the ship was broken *vi majore*, and at what time; and also ordained the charger to prove his attendance and hiring of mariners; *item*, assigned the day of January. Whereupon an act being made, letters of diligence by both parties are raised thereon: who compearing and deponing, the Lords at the advising of the cause and of the deposition of the witnesses, found the letters orderly proceeded for the sum of L.13 Sterling, and suspended them for the remanent sums charged for.—28th February, 1669.

Lauder, Clerk.

Advocates' MS. No. 3, folio 69.

1669. July. JAMES CLEILLAND and JAMES SCOT *against* MR. JOHN BONAR.

THIS action being called in July, 1669, it was ALLEGED for Bonar, defender, by Cunyghame, Harper, Stewart, and myself, his procurators, that no process can be sustained against him, because one of the assignees, viz. Edward Clelland, is deceased, and his testament is not yet confirmed; and so, no active title to pursue the defender on. *Vide infra*, 12th January, 1678, *Dundas* against *Holborn*.

ANSWER, Maxwell and Mr. Archibald Campbell, procurators for the pursuers,—That the allegiance above written ought to be repelled, in respect there are two others of the assignees living, at whose instance, as well as of this Edward Clelland, this action is intented and pursued, viz. James Scot and Ja. Clelland, son to the said Edward; and craved process at their instance, as assignees yet on life.

Which allegiance above written, and answer thereto, the Lords having considered, they declared before answer thereto, that they would hear both parties farther. And their foresaid action being again called, the pursuer's procurators declared they would restrict their pursuit *pro loco*, and insist *primo* for the two parts of the debt above written, due and payable to the two pursuers living.

Whereto it was ANSWERED for the defender, that no respect can be had to the pretended ticket produced for them, because the same is only a declaration, and noways obligatory, and so can furnish no action in law against him.*

Whereunto it was REPLIED for the pursuer, that in fortification of the ticket above written, produced by them, they offered them to prove that either the defender got money to pay the quarters contained in the said ticket, and did not pay the same; or otherwise was quartered upon some other person, and not on Margaret Wardrop the pursuer's cedent; and so the defender must be liable in payment of the quarterings above written.

Which reply the Lords, having considered, in regard of the long time that has intervened since the said quartering, by their interlocutor, found the said reply relevant to be proven by the said Mr. John Bonar defender, his oath of verity

* *Nota*, the act of indemnity in 1662, seems also to include and take away this debt.

simpliciter, and assigned the day of to his procurators to produce him, with certification, &c. who protested for a qualified oath, and the pursuer's procurators in the contrary. At the which term the defender compearing, he deponed *negativè*, that he got no money from the States to pay the foresaid quarters, and that he had no other quarters but with the said Margaret, and that he never promised her payment thereof; but thinks if he had gotten money to pay, that he was in duty obliged to have done it; and that he never knew any of the officers there at that time pay any money to them on whom they were quartered, for their quarters, &c.

Which oath and deposition the Lords having advised, they found thereby the said Mr. John Bonar was no way liable, nor subject in payment of the said sum acclaimed by the pursuers from him, as being noways their debtor nor their cedent's; and therefore *simpliciter* assoilyie him from the hail points of the summons, &c. and decern and declare him free and quite from the payment of the sum acclaimed, in all time coming.

Advocates' MS. No. 4, folio 69.

1669. *December.* LAUDER *against* DAVID WATSON and OTHERS.

IN the action of exhibition raised by my Father against Mr. David Watson, (which was called in December 1669 before my Lord Stair,) whereby was craved, that the defender might be decerned to exhibit the decret of apprising led at the instance of the E. of Ethil against the Lord Ramsay, with the blank translation thereof, and other writs relative thereto; to the effect they might lay in the process of reduction and improbation intended by my father against the same, till the final conclusion thereof: the pursuer's interest, whereby he called for the said writs, was libelled to be as a lawful creditor to my Lord Ramsay, and as having appraised his lands and intended improbation of the writs desired to be exhibited.

My Lord Stair would not sustain the interest, because it was a thing altogether unheard of, to call for exhibition of writs for any other effect except either it were for inspection *ad deliberandum* at the apparent heir's instance, or for delivery at the owner's. *Item*, If exhibitions of this nature were sustained, then should none ever wait upon the ordinary terms of improbation their running, but would raise exhibition against the havers, which is against form. *3tio*, No man can call for exhibition of writs except they be such as are conceived in his favours; and noways for writs that are in his prejudice, as is here. And hence my Lord Stair by his interlocutor, found, That if we would mend our libel thus, that we called for exhibition of that apprising, as led and deduced to the use and behoof of the Lord Ramsay, the common debtor, and which so behoved to accresce to the pursuer, who had comprised not only the right that then stood in the person of the Lord Ramsay, but also all supervenient rights whatsoever (as this apprising was,) that might become in his person; that then he would sustain the libel.

Item, Found that it would be more proper to crave such an exhibition by a bill to the Lords *in præsentia* than by an ordinary action. Though it may be reasoned, that having refused the desire of the exhibition, being pursued by way of an