

1683. *March 16.* ROBERT HAMILTON *against* The VISCOUNT OXENFORD.

THE action Mr Robert Hamilton of Pressmennan, as Collector to the Lords of Session of their rents and taxations, against the Viscount of Oxenford, being advised; the Lords assoilyied Oxenford, in respect of the discharge given to his father by the Lords of Session, and found no circumvention, (it were a shame to confess the Lords had been cheated;) and that, Mr Robert Hodge and the other sub-collectors being put in by the Lords, and not by him, he was not liable for them.

(Yet see Halton's case of the *Mint*, 20th January 1683.) But, in regard there was an error *in calculo* of £1600 Scots founded on, they referred it to my Lord Pitmedden to calculate and discuss it; and found the defender's father might retain his own fifteenth part of their rents, as one of the Lords of Session, those years that he and others were put out *de facto* (and not *de jure*,) by the Usurper, between 1651 and 1660; though he did not serve for it.

*Vol. I. Page 226.*

---

1682 and 1683. GEORGE PATERSON *against* GEORGE JARDINE.

1682. *January 27.*—GEORGE Paterson, wright in Edinburgh, against George Jardine, vintner in Burntisland. The Lords, on Saline's report, sustained the execution of an arrestment though it bore not six knocks and a copy fixed on the door; because it bore that the messenger having got access into the house, he delivered a copy of the said arrestment of my Lord Macdonald's horses and cloakbag to the defender's wife, he not being at home himself. And, as to their defence, that they were taken away by Macdonald's servants *vi majore*, the Lords allowed a conjunct probation; the defender to prove armed *vis* within a burgh where help might have been got, and the pursuer to prove that his wife and servants connived, colluded, and concurred with the away-takers; for which he must be answerable, being *in caupona et stabula*, by the Prætor's edict.

As to the first point, anent the arrestment, see the like decided in Stair's Institut. Part 2d, Title, *Confiscations*; 25th and 27th January 1682, Somervell. *Vide* 17th March 1683.

*Vol. I. Page 171.*

1683. *March 17.*—George Paterson, wright in Edinburgh, against George Jardine, inn-keeper in Burntisland, (mentioned 27th January 1682,) being advised; the Lords reversed what they did before, and found the arrestment not legally laid on, being only in the wife's hands and not in the husband's; and therefore assoilyied.

The words of the interlocutor were:—Having advised the probation and writs produced for either party, they assoilyie the defenders from the action of making furthcoming; in respect they find that the arrestment was not known to the defender before the horses and furniture libelled were taken away by my Lord M'Donald's servants, and that the giving of the copy of the arrestment to the wife immediately before the poinding, was not sufficient to make the husband liable; who, if he had known of the arrestment, might have used means to prevent the away-taking of the horses; which his wife could not do.

*Vol. I. Page 227.*