

their working linen-cloth narrower than an ell and two inches ; they present a bill of suspension and charge to put at liberty : which is refused ; because they had not, conform to the Act of Sederunt, 21st July 1675, by an instrument, intimated to the incarcerators that they were going to present such a bill.—Though that Act seems only to speak of creditors imprisoning their debtors by letters of caption.

Whereupon the Weavers having obeyed the Act, and intimated by an instrument ; on the 11th December 1683, Forret reported the bill of suspension to the Lords : who refused it ; and ordained them to depone if they had wrought any linen under that breadth ; (for each was fined in £20 Scots, and imprisoned for their contumacy in not deponing, and till they should pay their fine ;) though it was alleged, what they wrought under that standard was at the desire of the ladies and other owners of the webs, for their own private use, and they knew it was neither intended for markets nor to be transported abroad. Which seemed to be all that the Act of Parliament designed to obviate ; yet the Lords thought it might afterwards come to markets or be transported. And they also found the Bailies competent to fine them, though only *judices pedanei* of a barony. See the Act or Proclamation of Privy Council anent manufactories and weavers, dated 11th April 1681. *Vol. I. Page 248.*

1680, 1682, and 1683. JAMES CLELAND and — BAILLIE of LITTLEGILL
against BAILLIE of LAMINGTON.

1680. *February 4.*—ONE is charged to pay a sum contained in his bond : he suspends on this reason, That he is cautioner for the charger in the equivalent ; and so he ought to retain till he were relieved of his cautionry by the charger. Some thought this reason not relevant, unless he would allege that either he was distressed, or had made payment, or that the principal, who was obliged to relieve him, *vergebat ad inopiam* ; see Harprecht, *ad § penult. Institut. de Fidejuss.* ; or that he had a bond of relief from him to pay the debt betwixt and a day already past. *Vide infra, 24th July 1680.* *Vol. I. Page 82.*

1680. *July 24.*—James Cleland, merchant in Edinburgh, charges Baillie of Lamington to pay 3000 merks, contained in his bond. He suspends, *1mo*, On partial receipts, which, being indefinite, behoved to be allowed in part of this bond : albeit Lamington was likewise owing the charger other sums by tickets and accounts ; but, they not bearing annualrent, the indefinite solution must be ascribed to cut off the more burdensome debt, which bears annualrent ; *L. 1 et seq. D. de Solution.* *2do*, That he was cautioner for James Cleland, the charger, to Sir Archibald Primrose, for 4000 merks ; and had from James a special bond of relief, whereby he was obliged to retire the said bond with a discharge at a term long ago bypast.

ANSWERED to this second reason,—Lamington not being distressed, he could not, on this pretence, retain James Cleland's money.

Saline found, if it had been only a naked obligation to relieve, then it could not have afforded a sufficient ground in law to have detained the granter of that obligation's money, unless he say, "distressed ;" but, it bearing a specific

clause to purge the debt, and retire the bond betwixt and a day elapsed, Lamington was not bound to give any money out of his hands to the charger, till that was first done.

And it was informed that the Lords had so decided lately betwixt *Sir Patrick Nisbet of Dean* and *The Earl of Northesk*. *Vol. I. Page 110.*

February 21.—THE Lords, on Saline's report, allow Lamington to propone on the right in Littlegill's person, and James Cleland to propone upon his right from Mr William Somerville, and that the Lord Reporter hear them in the competition of the two rights: and, if James Cleland's right from Somerville shall be sustained as preferable to the other right, then the Lords allow James to pass from Littlegill's right standing in his person, and whereof he formerly made use, but was stopped with the pretence of compensation of Littlegill's counts, as once curator to Lamington. And decern in favours of the said James Cleland.

Yet James Cleland took this assignation from Somerville *pendente lite*, when *nihil est innovandum*. *Vide infra, 24th March 1682. Vol. I. Page 175.*

1682. March 24.—The Lords, on Saline's report, decern in favours of James Cleland, against the Laird of Lamington and his Cautioners; superseding extract of the decret till the 1st of January next; betwixt and which time, if the Laird of Lamington, by the event of the count and reckoning betwixt him and Baillie of Littlegill, who is James Cleland's cedent, anent his curator accounts, shall liquidate the sum due by Littlegill to him,—then declare that he shall have allowance thereof from James Cleland, his assignee, in the fore end of the sums, now decerned; and, in case he shall not liquidate the same betwixt and that time, ordain this decret to be extracted by James Cleland, without further delay: and the Lords declare they will grant no farther diet to Lamington.

This would only seclude him from his compensation against Cleland; but not against his pursuing of Littlegill. *Vide infra, 23d December 1682.*

Vol. I. Page 180.

1682. November 9.—The Lords ordained James to produce his account-books, (which was judged hard, to propale a merchant's book,) that it might be compared with the sum in the bond insisted on; in respect he had given an obligation to allow what errors Lamington should instruct in his count. But this means only errors *in calculo*. *Vide 23d December 1682.*

Vol. I. Page 193.

1682. December 23.—The Lords,—on a bill of Lamington's, pretending he was doing diligence to finish his count and reckoning against Littlegill, (though he had not stirred in it till within these last eight days,)—prorogated the time again to the first of February next, with this renewed declaration, That they would allow him no further time. *Vide infra, 9th January 1683.*

Vol. I. Page 204.

1683. January 9.—In a bill presented by James Cleland and Baillie of Littlegill against Lamington, (*vide 23d Dec. 1682;*) the Lords refused to put Lamington to a new process against Littlegill for his father's curator accounts. But, in regard that Littlegill alleged the act of count and reckoning proceeded without his knowledge, and that it was *res inter alios acta*, as to which he was neither called nor heard, they allowed him yet to propone what new matter he had to say against that act of litiscontestation which had past

in the count and reckoning betwixt James Cleland and Lamington, (*de quo vide supra*, 27th January 1680;) and in the mean time they stopped Lamington's extracting that act, till they saw what Littlegill could add or alter thereof.

Vol. I. Page 205.

1683. *December 8.*—Baillie of Littlegill, and James Cleland, merchant, as he who stands bound for Littlegill to Lamington, that he shall clear his father's chamberlain counts with the Marquis of Douglas, (for which Lamington's grand-father was cautioner,) give in a bill to the Lords, craving a protection to Littlegill for a month, (conform to the late Act of Parliament in 1681,) against his creditors, that he might come in and clear these accounts, it not being possible for Cleland to do it without him.

The Lords found this case fell not within the terms of the said Act of Parliament; and therefore refused the bill.

Vol. I. Page 249.

1682 and 1683. BAILIE OF TORWOODHEAD, *alias* LORD FORRESTER, *against* EDWARD RUTHVEN OF HUGH WALLACE.

1682. *December 14.*—AT Privy Council, Bailie of Torwoodhead gives in a bill against Edward Ruthven, and the Lady Letham and others, for dispossessing him of the house and estate of Corstorphine, whereof he was heir of tailyie; and therefore he craved repossession, and delivery to him of the charter-chest.

The Lords, in regard he was dispossessed by their own order, (*vide supra*, 18th September 1679, *Historical Volume*, Letham *against* Forrester,) therefore they refer him to pursue *via ordinaria* before the Session; but recommended it to the Lords to discuss it summarily.

The pretence of their not meddling with it was, that Edward Ruthven, then out of the country, was not cited; he is since dead, and any right he had falls to his two sisters.

Nota.—Torwoodhead, 30th March 1683, was repossessed in the house and yards; reserving the point of right to be discussed afterwards; and but prejudice of Hugh Wallace's comprisings thereof, which are reserved as accords.

Vol. I. Page 201.

1683. *December 10.*—Bailie of Torwoodhead, *alias* Lord Forrester, his debate with Hew Wallace, (mentioned 14th December 1682,) is reported by Pit-medden; and the Lords find that they will not continue Forrester's possession of that tenement lying in Forrester's Wynd, in Edinburgh, to him, as apparent heir of tailyie to James last Lord Forrester; because Hew Wallace instructed he was infest in it; and therefore *una voce* found Torwoodhead behoved to warn him to remove at Whitsunday next.

But this he cannot do except he were infest.

Vol. I. Page 250.