

and find the other points of the defence, anent helping him with the relict's credit, not proven by his oath: but, as to the modification of his damage, for want of insight, upon that account of not being sent abroad, remit the determination thereof to the opinion of Dean of Guild Baird, and Bailie Hall; and, in the mean time, stop the decreet at Becks' instance against the said Patrick Crawford.

It was ALLEGED,—That the expense of sending a common apprentice abroad is small, and, considering the short time they stay, needs not (going by sea) exceed £4 or £5 sterling; and by such voyage they can get little insight. *Vide* 5th December 1684. *Vol. I. Page 284.*

December 5.—The Lords having advised the case between Beck and Patrick Crawford, mentioned 25th March 1684, anent what modification Crawford should have, upon the account he was not sent twice abroad by his master, as the indenture bore: and seeing the two merchants, to whom the Lords referred it, had given no opinion, the Lords modified £10 sterling for his want of insight thereby: though the President thought £5 or £6 sterling enough for such small merchants and prentices in the Lawn Market. *Vol. I. Page 317.*

1684. December 5.—SIR JAMES COCKBURN of that Ilk *against* His FEUARS of DUNSE.

SIR James Cockburn of that Ilk, against his Feuars of Dunse, for relieving him of a proportional part of the new cess and taxation imposed by the last Parliament 1681.—By the last clause of the 3d Act thereof, feuars, vassals, tenants, and cottars, are bound to reimburse their superiors and masters, of the quotas therein mentioned.

But the Lords found Sir James could not exact from his feuars and tenants, though never so many, above the half of his own stent; else, in some places, a man might get more than his own part of the cess came to.

The interlocutor was:—The Lords found Sir James, by that Act, could not burden his vassals or tenants with more than the one half of the cess he pays for his own lands: and found, as to such feuars as were inrolled in the valuation-rolls by themselves, that they could relieve him of no part of the taxation, because they paid for their own lands; but, as to such as were not valued, who held some heritage of him in feu, and laboured other men's lands as tenants, that they should pay what the said act imposes on tenants, *viz.* £4 Scots; and, if they had no labouring, then £6 Scots; but if they had only a house, and had no trade at all, then that these should be reputed and cessed as cottars.

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1684. December 6. A DRAGOON'S HORSE POINDED.

A DRAGOON'S horse being poinded for his debt, he raised a summons of spuilie, and ALLEGED,—If such poindings were allowed now in thir broken times, his Majesty's service might be easily retarded and frustrated. ANSWER-

ED,—There was no law exeeming their horses, though captions could not be executed against their persons.

REPLIED,—Public utility required this security, as well as it had done in the case of plough-graith, (but that is by a special statute, Act 98th, Parl. 1503;) and, where a soldier is owing me, I have a remedy by complaining to his Captain, who is bound to turn him out of his company, or else to detain as much of his pay as will satisfy the debt.

The Lords, on Drumcairn's report, found it of the nature of a spuilyie, and that the horse ought to be restored *cum omni causa*, and the Dragoon's prejudice refounded, by his attendance in seeking him back again.

See the like formerly reasoned and decided at Privy Council, the 10th March 1681, Major Lyell; but there it was not a common soldier's horse, but an officer's; only he belonged to the militia, and not to the standing forces.

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1684. December 10. The COUNTESS OF KINCAIRDEN *against* CORNWALL of BONHARD.

THE Countess of Kincairden and Cornwall of Bonhard decided. Bonhard had been tacksman of the Earl of Kincairden's coal and salt at Culross;—but had, by letters under my Lord's hand, ground to crave retention and abatement of 5000 merks of the tack-duty. The Countess, as donatrix to her husband's liferent escheat, craves he may count for the whole, and ALLEGED,—She was not bound to stand to these abatements.

The Lords allowed the defalcations, and found she behoved to stand thereto.

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1683 and 1684. LANCELOT CATHCART and ——— CARLETON *against* JANET RAMSAY and ARTHUR M'GILL of KENBACK.

1683. March 13.—IN Cathcart and Carleton's action against Janet Ramsay and Mr Arthur Macgill of Kenback, for the jewels;—the Lords, on Pitmedden's report, adhered to a former interlocutor; and find still, that the executors of Colonel Cunningham, the husband, have good right to pursue for the exhibition of the jewels, without prejudice to the executors of his wife to pursue for her third, and the *paraphernalia*, as accords of the law. And find, That John Ramsay ought to have called the nearest of kin to his decret of exoneration; and that, they not being called, the said decret does not exoner him. And find, that John Ramsay is liable upon the trust, notwithstanding of the allegiance that Mr Robert Byers was conjunct trustee with him; and that in respect of the bond bearing John Ramsay to be the depositor, and his not doing diligence against Byers *debito tempore*, for recovering of them. And find, That John Ramsay, as executor-creditor to Colonel Cunningham, has right to affect the jewels and writs, to the value of the debts owing to him;