

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;

and allow the pursuers to be heard against the valuation of the jewels made in favours of John Ramsay, in his confirmed testament. *Vide l. 1. § 25, et seq. D. Depositi.*

Then, on the 16th of March, a hearing in presence being granted upon the consignment of these jewels in the clerk's hands, and their act for giving them up, the Lords adhered to their interlocutor of the 13th of March, but recommended to the parties to agree.

So that, by this, they find, that the voluntary consignment John Ramsay made of the jewels in their clerk's hands, was not the habile way to liberate him from being accountable for them; all such consignations being *periculo consignantis*, and the Lords not being appointed for such ends: and that he must be liable for them, though they were given up in 1678, by an act of the Lords; seeing Edmonston, who got them up, was not the right person.

This stumbled many, as a hard interlocutor. See 29th March 1683.

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1683. *March 29.*—The case between Cathcart and Kenback, mentioned the 13th current, being reported by Pitmedden;—the Lords ordain both parties to prove the following points:—the defenders, That the Cathcarts, cited by John Ramsay to his decret of exoneration, were Colonel Cunningham's nearest of kin: and thir pursuers to prove their contingency, and that they are truly his nearest of kin; and that the Cathcarts called by him were dead before that. And allowed a conjunct probation to both parties, as to the value of the jewels, and directed a commission to Ireland, for trying the above mentioned points.

Then, upon a new bill, the Lords, 31st March 1683, refused to grant commission to Ireland, for proving the value of the jewels, but allowed the value to be proved only in Scotland; and granted commission to either party. To the pursuers, to prove their own propinquity of blood: and the defenders to prove the persons' propinquity to the Colonel, who are called in their decret; as likewise for proving the time of the mother's death, and if the Colonel's son out-lived his mother. And, for that effect, recommend to Arthur, Lord Viscount of Granard, to receive the oaths and depositions of such famous witnesses as shall be adduced before him, for proving the points above mentioned.

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1684. *March 5.*—Lancelot Carleton's probation led against Janet Ramsay and Mr Arthur M'Gill, her husband, in the case mentioned 29th March 1683, was advised; and the Lords found Carleton's wife, and the other pursuers, their proximity of blood to umquhile Colonel Cunningham who impignorated the jewels, proven, &c.

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1684. *March 26.*—Mr Arthur M'Gill of Kenback gives in a bill against Mr Carleton and the Cathcarts, mentioned 5th March 1684; representing that Colonel Cunningham, to whom they were confirmed executors, was owing John Ramsay, from whom he had right, a considerable sum of money, for which he had raised a process against them; and, they being strangers dwelling *extra regnum*, it was just they should find caution *judicio sisti et judicatum solvi* in his reconvention, in case he prevailed; that, by their withdrawing, his action might not be rendered elusory and ineffectual.

The Lords would not grant the desire of this bill. See Dury, 9th February 1628, *Kirkhead*.

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1684. *December 11.*—In Carleton's action against Janet Ramsay and Mr Arthur M'Gill, mentioned 5th March 1684,—The Lords advised the last point of this process, anent the jewels abstracted by Mr Robert Byres; and found it was a *casus fortuitus* on John Ramsay's part, and that he did sufficient diligence for recovery thereof; and therefore assoilyed him from restitution of the same.

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1684. *December 16.* CHARTERIS against ———.

IN the case of one Charteris, reported by Castlehill, the Lords demurred exceedingly if they should grant an aliment to one party from the other, seeing they had granted one already, and the process was not yet brought to a close; and that it was *nobilioris officii*; and that such modifications were more ordinarily granted by the Privy Council than by the Session. *Vol. I. Page 320.*

1684. LOCKHART, MENZIES, &c. against JOHN ELIES of ELIESTON.

*January 8.*—Mr John Elies's action of relief against the Co-tutors of William Lockhart, mentioned 16th March 1683, is again reported by Kemnay; and the Lords decern them to relieve him *pro ratis portionibus* of what he shall be decerned in, upon the event of his count and reckoning with William Lockhart: and decern them to concur with Mr John in defending against the said William. *Vide 24th January 1684.*

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*January 24.*—Mr John Elies of Elieston's cause against Menzies of Culterallers, Lochart of Lee, Robert Chiesly, and the other Co-tutors, (mentioned 8th January current,) being reported by Kemnay; the Lords repel the allegiance proponed for Culterallers, and find him liable as tutor; and decern him to concur with the pursuer in the count and reckoning at William Lockhart's instance; and find he is liable *pro rata* to relieve the pursuer for what shall be decerned against him therein; reserving to his procurators to be heard in the said count and reckoning, upon this point, If he can be liable to relieve Mr John Elies the pursuer of what shall be decerned against the said Mr John, upon any ground arising from his own dole and fraud: and repel the allegiance proponed for the said Robert Chiesley, and decern him to concur in the said count and reckoning; and find him liable to relieve the pursuer *pro rata* of what shall be decerned against him therein: as also decern against the Laird of Lee; and find him liable to concur with the pursuer, and to relieve him *pro rata*. But, if the Laird of Lee his procurators shall apply to my Lord Kemnay, recommend to him to hear them upon any special defences for him not proponed already. *Vide 16th December 1684.*

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*December 16.*—Mr John Elies's action of relief against Lockhart of Lee, &c. mentioned 24th January 1684, is reported by Kemnay; and the Lords repel the special defence proponed by the Laird of Lee, and likewise the special defences proponed for Culterallers and Robert Chiesly, in respect of the answers made