

The pursuer had, by a paper, restricted it to 4000 merks. *2do*, In payment of part, he had taken an assignation to some victual; and referred both to oath. Scaitsbuss deponed to the first, he gave a declaration, in 1681, that if, within a year, they paid him 4000 merks, he should accept it; and being put in Hepburn of Beinston's hand, and not fulfilled, he, four years after, gave it him back, and he cancelled it.

ALLEGED,—This was *pactum legis commissoriæ*, and still purgeable for 4000 merks.

The Lords refused to restrict him: but, as to the second, of the victual, they ordained him to be reëxamined, whether it was for this debt or another. See the like decided in Stair, *20th February 1680, Jameson. Vol. I. Page 440.*

1687. *January 15.* BAILIE BAIRD *against* HAMILTON of FALAWHILL.

[HAMILTON of Falawhill owing Bailie Baird a sum of money, and he having received some of the rents of his lands for his annualrent, he offered to improve one of the receipts as false: but the Lords, after trial, sustained the discharge. *Vol. I. Page 440.*

1687. *January 18.* A SHETLANDER *against* ———.

A SHETLANDER pursues for maills and duties of some lands in Shetland, on a tack set to him by this King of Denmark's father. ALLEGED,—This was treason for the pursuer to take rights from a foreign Prince, and a disclaiming of our King. ANSWERED,—The King of Denmark might be our King's vassal in thir lands, even as a nobleman or gentleman, holding of the King, might give a charter to his sub-vassal. But, in Shetland, they have no infestments, but only allodial rights; and the Crown of Denmark of old had right to it and Orkney.

The Lords ordained the tack and process to be razed and destroyed, and the pursuer to be insisted against for treason. *Vol. I. Page 441.*

1687. *January 22.* SIR JAMES COCKBURN *against* LAWRENCE POWER and ——— DEANS.

THE case of Sir James Cockburn against Laurence Power and Deans, was advised. It was a pursuit against the heir of a cautioner for a sub-collector of the customs, excise, and bullion, in 1662, and thereafter, to count and reckon, when all the parties are now dead; wherein allowance was craved for his salaries, which they alleged were to be presumed to have been paid, though counts were not yet cleared betwixt them; and they were charged with twelve-pence for the ounce of bullion; whereas, by Act of Parliament, it was but nine-pence.

The Lords ordained Magnus Morton's books to be produced, and Sir Walter Seton, then conjunct tacksman, to depone on sundry particulars.

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1686 and 1687. JANET ALISON *against* GEORGE SHIELL.

1686. *January 15.*—JANET ALISON, relict of Adam Steven, against Mr George Shiell, minister at Prestonhall. He having taken out a diligence after the 1st of November last, (which was the day to which it was granted,) it was objected against. He ALLEGED,—It was formal and *tempestive* enough to execute it any time before she extracted the act; and circumduced the term against him; as had been decided between *Sir Alexander Forbes and Tolquhon*.

This being reported by Saline, the Lords had no regard to the diligence, as not being *debito tempore* executed; but, *ex gratia*, allowed him to the 1st of February to adduce and close his probation, and to procure what writs and documents he was to make use of, to prove the inventory of the testament was exhausted, or that the debtors were irresponsal. *Vide 22d January 1687.*

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1687. *January 22.*—In Janet Alison's charge against Mr George Shiell, mentioned 15th January 1686; he offering assignations to debts, and she refusing them now, seeing he had not done diligence for many years; the Lords, at advising the cause, allowed Mr George Shiell, suspender, to assign, to the charger, as many of the debts contained in the inventory of the testament, as may satisfy the sum modified for her legacy, deducing a proportional part of the expenses of confirmation, and other necessary expenses debursed by him, at the sight of the Lord Redford, who heard the cause; the suspender always proving that the debtors in these sums are as responsal now as they were at the time of the confirmation; and ordain the diligence that shall be done by the charger, for recovery of these sums, to be upon the suspender's expenses.

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1684 and 1687. SIR PATRICK HOME *against* HOME of LINTHILL.

See the prior parts of the Report of this case in the Index to the Decisions.

1684. *November 21.*—SIR PATRICK HOME and Linthill's case, mentioned 24th November 1683, was debated and decided; and Linthill alleging that Sir Patrick could not lay his dam upon his ground:—ANSWERED,—The ground on the other side was the commonty of Eyemouth, wherein Sir Patrick had also interest. *2do*, Thir mills being built *super flumine publico; usus riparum* in such rivers is public.

But this is only for unloading goods, but not for a permanent burden: § 4, *Institut. de Rer. Divis. et l. 5, de eodem tit.* And Craig, *lib. 2 feud. dieg. 8,*