

THE LORDS found the executrix liable for the surplus of the corns above the estimate, and that according to the fiars of that year, though more than the prices confirmed; for if by the proof, the corns had come short of the estimate, the executrix would have had deduction thereof; and found, that she had meddled with the bonds, and decerned for the superplus, conditionally, that if she produce the bonds, that thereby the executor *ad omnia* might insist, or having given them up, if she could instruct the compensation or payment, the same should be received to liberate her, for which she got a month allowed her to do diligence.

No 628.

*Stair, v. 2. p. 704.*

\* \* \* Fountainhall reports this case:

IN the action pursued by Alexander Bruce against Anne Douglas, Lady Kair, the LORDS having this day advised the defender's oath, they found it proved, that she had intromitted with six bolls of oats and two bolls of bear more than was confirmed by her, and therefore find her liable for the price of the same according to the Candlemas fiars of the year; and refuse to sustain the quality adjected to her oath anent the destination of nine bolls and a firlof of bear to pay small debts with; and therefore decern the defender to pay likewise the price thereof according to the Candlemas fiars; and find the defender liable for the sums contained in the Viscount of Arbutnot's two bonds to her husband, unless betwixt and the 6th day of December next, she exhibit and produce in the clerk's hands, either the bonds, or if they be not extant, the grounds of compensation by which her husband owed my Lord Arbutnot sums of money, as is mentioned in her oath; and superceded extracting of the decret as to this last, of the sums due by the said Viscount, and to him, until the 6th day of December next, to the effect foresaid."

*Fountainhall, v. 1. p. 61.*

1687. July.

MR JAMES BOYES *against* ABERCROMBY.

IN a pursuit for re-delivery of the pursuer's watch, it being referred to the defender's oath, that he got such a watch from the pursuer, he deponed, that he got the watch to give a watch-maker to help it, whom he saw deliver it back to the pursuer.

No 629.

THE LORDS repelled the quality of re-delivery, and ordained the defender to prove it as a defence.

*Harcarse, (OATHS.) No 742. p. 210.*