

1688. *February 21.* MAGNUS PRINCE, &c. Tacksmen of the Customs, *against* JAMES CARMICHAEL.

MAGNUS Prince, and other Tacksmen of the Customs, pursue James Carmichael, brewer, upon his contract, to relieve them of sundry debts. ALLEGED,—His agreement bears a mutual obligation that the tacksmen shall pay in to him the excise; *ita est* he wants yet for Thomas Robertson's and Charles Murray's brewings. ANSWERED,—This compensation was not *inter eosdem*, seeing the chargers had paid their excise, and he had action against the deficient.

REPLIED,—They were all bound to him, and it behoved to be understood conjunctly and severally, the words being "they paying;" which is *oratio indefinita æquipollens universali, i. e.* they all paying.

The Lords found them all liable conjunctly and severally for one another's excise; and refused relief till all paid for their brewings, seeing the excise was the only subject out of which he could operate relief.

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1688. *February 22.* JOHN CALLANDER *against* — RAE and ANDREW FORRESTER.

John Callander, smith, having obtained a decret against Rae, a barber, and Andrew Forrester, bower, for £1400, as the expenses of the process carried on by the King's Tradesmen against the Town of Edinburgh, for declaring them free of cess and other burdens, as mentioned 20th March 1684, they being bound conjunctly and severally with the rest for reimbursing him:—it was suspended, *1mo*, Because, by a posterior agreement, they stood only bound *pro rata*. *2do*, He had lost his expenses by his prevarication in disclaiming the pursuit before the Town Council of Edinburgh; *et mandatarius excedens fines mandati perdit actionem contrariam pro impensis*; and much more if he betray his trust.

The Lords, before answer, ordained the suspenders to depone, whether they knew of the alleged disclamation when they subscribed the last stated account, bearing the obligation on the back thereof, for payment of the total sums therein mentioned; or what time they came to understand the foresaid disclamation: and ordained them to produce the said disclamation. Likeas, they ordained the charger to depone what expenses he truly depursed before the said disclamation, as also what he truly expended after it, upon account of the pursuit; for the Lords resolved to give him no expenses since his disclamation, but only those before.

The Deacon having reclaimed against this, and the Lords having considered his bill with the answers, on the 28th February, they stopped their foresaid interlocutor, and refused to take the oaths of Rae and Forrester, the suspenders, anent their knowledge of the said declamation; which they found has been understood by them in the process before the Commissaries: (the mistake of