

and, by a charter in 1662, before their gift in 1666, he had the privilege of keeping girdle-smiths, [*craticularum fabros* ;] and that every burrow or Baron might set up what tradesmen or artificers they pleased, it being a natural consequent of the liberty of the subject, and the reward of virtue and industry, to improve trades, and hinder extortion in prices, *ubi vivitur ingenio* ; and King James's letter is only to stop unfreemen to work within Culross, otherwise any corporation might get a gift to hinder all others within Scotland but themselves.

The Lords, before answer, recommended to Drumcairn to take trial if the girdlemakers of Culross have any other trade or craft than that of making girdles, and at what prices they sell the same ; and likewise to try if the men in Valleyfield do make sufficient girdles, and at what prices they make the same, and if they have any other trade than making of girdles ; and if they were in use of making girdles before the resignation whereupon Valleyfield's charter proceeded.

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1688. *July 12.*

THE Chancellor gets a new signature from Court of all his lands, erecting them into a regality, and enlarging the bounds of his stewardry, taking in sundry lands belonging to the Marquis of Athole ; which creates farther animosities betwixt the two families.

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1687. JOHN DONALDSON *against* JOHN CARNEGIE.

1687. *February 9.*—THE case of Donaldson against Carnegie, Provost of Forfar, was reported by Boyne. This was a subsidiary action for paying a debt, for suffering Lyon of Cossins to escape out of prison. ALLEGED,—That, by a probation led in a process against the messenger before the Lord Lyon, it appears to be proven, that he had taken money to let the rebel escape ; and so the Provost ought to be assoilyied. ANSWERED,—He opposed the messenger's execution, by which there was *jus quæsitum* to him, which could not be taken from him.

The Lords ordained the pursuer to fortify and adminiculate his execution by the oaths of the messenger and witnesses, but prejudice to the defender to insist against the messenger for the debt on his malversation, as accords. *Vide* 11th June 1687.

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1687. *June 11.*—John Carnegie, Provost of Forfar, being pursued by John Donaldson in a subsidiary action for paying the debt, as mentioned 9th Feb. 1687 ; the Provost gave in a bill, craving a joint probation as to the manner of the rebel's escape, seeing he offered to prove that the messenger, by bribery and collusion, had suffered him to escape. The Lords granted a mutual probation. And thereafter Donaldson bringing in the witnesses to the execution of caption, to depone that the prisoner was wanded, and offered to the Provost

to be incarcerated, and accepted by him ; Provost Carnegy gave in a new bill, bearing, that, if his probation were taken, it would appear that thir witnesses were the contrivers of his escape, and took money, and so were art and part ; and therefore craved a commission to my Lord Carse to examine both parties' witnesses at Forfar, (which is near his own house,) in the next vacance, and to consider and try the objection against the hability of thir witnesses, in case it appeared that they were suborned. Which desire the Lords, on the 17th June, granted. *Vide* 14th July 1688. *Vol. I. Page 456.*

1688. *July 14.*—Donaldson's action against John Carnegy, Provost of Forfar, mentioned 11th June 1687, is advised. The Lords find the Magistrates of Forfar liable, and decern, in regard of the messenger's execution, which they sustained, especially being adminiculated by the instrumentary witnesses : and also find them liable for the annualrent, notwithstanding of the decision 29th June 1626, *Haliburton* ; because there the annualrent was only due *ex lege et via actionis* ; but assoilyie the Town from the penalty of the bond.

And, on a bill given in by Provost Carnegy against Stewart the messenger, craving they would find him liable to relieve them, because he suffered the rebel, by his connivance and corruption, to escape ; the Lords declared they would review the probation, how far it touched the messenger. But he gave in a condescence of the prevarications of the witnesses who had deponed against him, to alleviate and nullify their testimonies. And at most this would only infer William Carnegy's debt against him, but not Donaldson's.

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1688. *July 17.* STEWART of ROSSYTH *against* The EARL of ANNANDALE.

STEWART of Rossyth pursuing the Earl of Annandale for a cautionry of his father's for the Earl of Home ; and, to prove payment of the bygone annual-rents, Annandale producing a fitted account, it was ALLEGED,—The account related to two bonds wherein Annandale's father was bound ; and so the article could not be totally defalked off this bond now pursued on.

The Lords, in regard the other bond could not be produced, to know what sum it contained, they made them equal, and ascribed the half to this bond, on the presumption of law, that, where a thing is indefinite, it resolves into an equality.

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1688. *July 18 and 19.* CLELAND and PATERSON *against* WILLIAM WILSON.

CLELAND and Paterson, two messengers, pursue a reduction and improbation of William Wilson's rights on a tenement in Edinburgh, wherein the Lords had found, before, that, if two comprisings be led for the same debt, the second is a passing from the first, at least to the effect of keeping its legal from expiring. A decision in Dury, 14th December 1621, *Faldonside*, was opponed. It was also urged, that, *quoad* bygones, he had *titulum putativum* ;