

1692. *December 28.* ALEXANDER YOUNG, Merchant, *against* SUTTIE and HEPBURN, his Curator.

ALEXANDER YOUNG, merchant, against Suttie, and Robert Hepburn, his curator. The Lords found Young had done enough, by intimating the plea to Suttie, the co-cautioner's heir, and that he was not *in culpa* in not extracting and taking out the commission, seeing it was clogged with Young's finding caution, which he was not able to do. Suttie's curator should have engaged with him, to have promoted the commission, he being as much concerned in it as Young; though it was ALLEGED that he was not bound to be cautioner for him, and that Young should have applied to the Lords by a bill, either to have been free of the caution, or to have made the co-cautioner concur with him. But the Lords reserved action of repetition, as accords, against Bain, who had obtained the decret against Young, that, if they yet instruct he had received payment, by bills on the factor, of the sums he took decret for, his heir should refund *pro tanto*. Only he will obtrude his decret *in foro*, on a circumduction for not proving the said partial payments by the factor's compt-book. *Vol. I. page 539.*

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1692. *December 28.* STEWART *against* GRANT of ELCHIES.

STEWART in Inverness, pursuing Grant of Elchies, brother to the Laird of Grant, for his quarters at his house, when Lieutenant-Colonel to his brother's regiment, ALLEGED,—The treasury was owing him more; and by the act of Parliament, 1690, the three months cess and hearth-money was appointed for their payment, and he was content to give him a precept on his arrears.

The Lords repelled this, and found him liable, being an officer, and it was furnished not to his company, but to himself. And remembered, that in Fleming the Baxter's case against Major George Winram, for bread furnished to the Castle of Edinburgh, they would not find it a public debt, seeing they contracted on the faith of the private parties. *Vol. I. page 540.*

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1692. *December 28.* WILLIAM PATON, &c. CREDITORS of ELIZABETH STEWART, Petitioners.

WILLIAM PATON, and other creditors of Elizabeth Stewart, who was married to Mr. George Winram, resolving to bind the passive titles on him to pay her debt; and finding that Bailie Chartris had advanced far in a process against him for a debt of his said wife's, as representing her, and fearing it might be agreed and abstracted, therefore they craved the Lords would grant a warrant to the clerk not to give up the process till theirs came in.

The Lords thought as to the depositions of witnesses, and other *instrumenta*