

No 4.
Householders
in towns who
let lodgings,
come within
the descrip-
tion of *nautæ*,
caupones, &c.

1694. February 16.

ROBERT MAY, Merchant in Borrostounness, *against* WINGATE and his Wife.

THIS was a pursuit upon the edict *nautæ, caupones stabularii, ut recepta restituant*, because he lodging at their house, gave them a bag of money in keeping, and when he required it, they declared it was stolen. The *first* question was, if setters of rooms, &c. were in the same case with inn-keepers and taverners. THE LORDS thought they were. *2do*, If a man leave money or other goods, and go away for a time, and it be amissing in his absence, whether that can fall under the edict, and the strict diligence required of them, making them answerable for all incomers and other servants; or if it was only in the case of a *depositum*, which does not require so severe a custody? And several LORDS inclined to think, that they would only be liable as *depositarii*; but in both cases thought their bare assertion must not be taken that the goods were stolen, but they behoved to give some evidence of it, that the trunks or cabinets were found broken at such a time, and witnesses were called to see it; else they might give any that trusted them a very short answer, your goods are away, without condescending on the accident; though the manner being oft times clandestine cannot well be proved.

July 10.—ROBERT MAY *contra* Wingate, about the money stolen, mentioned 16th February 1694. A debate arose, whether he was liable on the Prætor's edict, as *caupo*, or only as an ordinary depository. THE LORDS found, seeing he had lodged in Wingate's house, and gave them the money to keep, and then went out of town and returned again, and at that time it was stolen, that therefore they were in the precise terms of the edict, and to be liable *tanquam caupo*, seeing it was acknowledged, that at the accepting, she promised to secure it. But if it had been lost in his absence, then they would have been only liable as depositars; but even then their negligence is palpable, seeing it was proved they had put his money into a trunk which had a very bad and insecure lock, which opened with a knife, whereas they had stronger and safer coffers and trunks in the house. The poor folk were to be pitied, but the law clearly struck against them, either under the one notion or the other. And it alters not the case that he had left the house, seeing he had returned, and it was not stolen *medio tempore* but the very time he lodged there. *Origo negotii et initium contractus* is always to be considered.

Fol. Dis. v. 2. p. 1. Fountainhall, v. 1. 610. 627.