

considering that had been only done some time before, the messenger was at least *in bona fide* to suppose that he still lived in the father's house.—*Dissent. Preside et Drummore. 3tio*, With respect to the execution against the same Grim, the defenders adduce the evidence of the two only servants who were at that time in Grim the father's house, who both depose that they got no copy from the messenger, and that he was but once in the house for a year before, and then he was alone. This evidence was the stronger, as the messenger and witnesses, in the explanatory execution, (of which we made mention January 28, 1741,) had condescended upon these two persons as those to whom they gave the copies. Neither was the execution in this particular, supported by the oaths of the witnesses taken by the pursuers as approbatory of the execution; for one of them depones that he was positive the copy was given to Margaret Forsyth, (one of the servants;) the other thinks it was rather given to a woman who was not at that time servant in the house.

But this likewise the Lords repelled, in respect that the presumption of law is for the truth of the execution, which cannot be taken away by a negative evidence, or mere *non memini*, especially, where there is no evidence of fraud or deceit intended.

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1741. June 12. REDHOUSE *against* BAILIE of the ABBEY.

[Elch., No. 2, *Abbey*; C. Home, No. 171.]

In this debate, likewise, a question was thrown out, Whether money could be pointed in a debtor's pocket?

The President and Elchies gave their opinion that it could.

It was also questioned, Whether debts contracted in the Abbey were privileged, so that personal diligence might be done for them, even against persons in the sanctuary. The President thought that they were.

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1741. June 12. SIR JOHN ARNOT *against* ———.

This was a question about the nomination of a bellman, betwixt a burgh of barony and the baron. The bell was allowed to be the property of the burghers, purchased at their joint expense, and was employed by them as a passing bell, to intimate deaths, and summon people to funerals. This they said was a co-partnership, a company trade, which had nothing illegal in it, and with which the baron had nothing to do.

The Lords found, That the nomination of the bellman belonged to the baron,