

No 2. be conceived, as to the granting the receipt in custody, yet truly it was borrowed, and the defender became personally obliged to repay it; and it is known, that the army, for the engagement, marched not Durham way, but the west way in England; and it is unreasonable that the defender should offer to prove his defence by his own oath.

THE LORDS, before answer, ordained the Bishop to give his oath upon the way of consigning the money, or depositing it in his hands; and whether that individual money was plundered at that time.

Gilmour, No 158. p. 112.

1626. *March 18.*

E. CASSILS *against* SIMPSON.

No 3.
A nobleman left his Parliament robes with his tailor in a trunk. To render the tailor liable, it was found necessary to prove, that the key of the trunk had been given to him, and that he undertook the custody.

THE Earl of Cassils, as heir to the deceased Master of Cassils, his uncle, pursues George Simpson tailor in Edinburgh, for delivery to him, as heir to the said umquhile Earl, of his Parliament robe, which was within a trunk, and which trunk, having the said robe within the same, was put by the said umquhile Earl's servant, at his command, in the said George's dwelling-house, and was committed to the said George's custody and keeping. This summons was not found relevant, seeing it was not therein libelled, that the key of the trunk, where the said robe lay, was delivered to the defender, and that he took upon him the custody thereof, and to be answerable therefor; without the which had been specially libelled, the LORDS found, that the defender could not be convened, nor be found answerable therefor, albeit the summons bore, that the same was put in his house, and expressly was committed to his custody and keeping. For the LORDS found, that such persons, as was this defender, being common servants to noblemen, as this excipient, who was his tailor, ought not to be answerable for coffers and trunks, and boxes with writs, and such other wares, pertaining to noblemen, which their servants would set in within the dwelling-house of their merchants, or tailors, at the noblemens' coming, or being in Edinburgh; for they would take the same out, and put the same in again, at their own pleasure, as they had occasion to use the same, without the knowledge of the owner of the house, so that it were great iniquity to burden the master of the house with the same thereafter, except that it could be proven, and that it were libelled, that they had meddled with the same, and done any deed prejudicial to the owners therein.

Act. ——— *et Nicolson.*

Alt. *Mowat.*

Clerk, *Scot.*

Fol. Dic. v. I. p. 234. Durie, p. 193.