

No 4. 1611. November 9. Ld of JOHNSTON *against* \_\_\_\_\_.

SUPERSEDERE granted by the Lords, at desire of his Majesty's letter, to the Laird of Johnston, of all actions to be pursued against him till his age of fourteen years.

*Fol. Dic. v. 2. p. 83. Haddington, MS. No 2294.*

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No 5. 1622. December 20. JOSIAS STEWART *against* BARGENY.

JOSIAS STEWART being at the horn for civil causes, and having necessary occasion to compear to be permitted to crave curators to be chosen to his oye, Bargeny's son; the LORDS gave him a protection to that effect.

*Fol. Dic. v. 2. p. 83. Haddington, MS. No 2712.*

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No 6. 1669. December 7. Sir JOHN URQUHART, Supplicant.

SIR JOHN URQUHART gave in a supplication to the Lords, bearing, That he being cited before the Council upon several alleged riots, and fearing that he might be excluded from appearing in his own defence by hornings against him, therefore desired that the Lords would grant suspension of all hornings against him *ad hunc effectum*, only to give him *personam standi in judicio*, but prejudice to the creditors of all other execution;

Which desire the LORDS granted as to all hornings he should condescend upon.

*Fol. Dic. v. 2. p. 83. Stair, v. 1. p. 656.*

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No 7. 1675. December 8. JOHNSTON of Wamphray.

THE act of Parliament against protections, 3d Sess. of his Majesty's 1st Parl. cap. 4. (1663) giving power to the Lords of Session and Exchequer, Privy Council and Justice General, to grant protections to persons summoned to appear before them, is only to be understood in that case when they are obliged to appear personally to give their oaths, or to be witnesses, and cannot appear by procurators; and such protections ought not to be granted upon pretext that processes of compt and reckoning and others cannot be managed without their own presence; and this was found upon a bill given in by Johnston of Wamphray, whereby he desired a protection.

And yet it is thought, that in some cases, where it is evident that there is a necessity of the defender's presence to give information in the point of fact, es-

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pecially in general actions of compt and reckoning, protections ought to be granted;

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*Fal. Dic. v. 2. p. 83. Dirleton, No 313. p. 153.*

1678. November 7. WHITEHEAD against JOHNSTON, &c.

WHITEHEAD of Park having supplicated the Lords, shewing that James Johnston writer to the signet had executed a caption against him, notwithstanding that the Lords had given warrant to the Lord Gosford, auditor in the compt and reckoning, to supersede personal execution, upon any debt or other civil cause against Whitehead, for such time as the auditor found reasonable for his attendance on the account, and accordingly the auditor, upon the 27th of July last, superseded all personal execution till the 5th day of November; yet the said warrant being produced to James Johnston and the messengers, at a meeting of the creditors, he, in contempt thereof, put the same into execution, and therefore craving that he might be set at liberty without caution or consignation, and that they might be punished for their contempt; the LORDS, upon the second day of November, having called and heard the parties, ordained Whitehead to be set at liberty, and James Johnston and the messengers to appear again, and the LORDS would consider what punishment to impose for their contempt. So having this day appeared with both their procurators, they did *alleged, imo*, That they had done no wrong in executing the caption, in respect of the act of Parliament against protections, which, though it contain an exception for superseding execution by the Privy Council and the Lords of Session, as they should find just for attendance of parties upon processes, yet that could only be extended against captions for liquid sums; but this caption was for exhibition of writs, which the same auditor had ordained to be put in the clerk's hands, and alleged a practise, by which the Lords declared they would extend supersederies only as to liquid debts; *2do*, That the auditor had no warrant in the vacant time to give stop to execution.

THE LORDS repelled these defences, after consideration of the act of Parliament, which is general for stopping execution upon any civil action, for parties to attend processes, and that by sentences of exhibitions as well as others, whereby the attendance of parties are hindered; and albeit the Lords, or auditor, upon application, might have restricted the protection, nor to extend to the delivery of writs, which were not in the party's power, yet no party might, *via facti*, without the Lords' warrant, proceed to execution, after a stop shown, especially it being intimated in session time, when the party might apply to the Lords for remeid, as the auditor reported to have been done in this case, and that of consent of all parties they had desired the compt to proceed in the vacance, as appears by the stop, being to the fifth day of November, or sooner, if the compt and reckoning were sooner closed. Neither was there any prac-

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The Lords of Session grant personal protection, not only when the execution is for a liquid debt, but also *ad factum presentandum*.