

of, proving, by the arbiters' oaths, that they did examine the witnesses in the instrument bearing the promise, upon oath, and that they did prove the promise, or that the party did acknowledge the same before the arbiters.

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1678. *July 2.*

ALEXANDER YOUNG, Supplicant.

ALEXANDER Young gave in a bill of suspension, bearing, That he had a protection from the King, upon payment of annualrents; and that he offered the annualrent to the messenger, and yet he put him in prison by caption: and offered yet the annualrent, and craved liberty.

The Lords refused the bill, in respect that the protection being conditional, he paying his annualrents, that condition not being fulfilled before incarceration, the protection had no effect; neither was the messenger a competent judge to cognosce upon annualrents, or receive the same; nor did this party produce a discharge of the last term's annualrent; and, therefore, the Lords would not suspend the principal sum, upon consignation of the annualrent, without other reasons against the principal sum.

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1678. *July 4.* CAPTAIN HUME *against* ANNA LIVINGSTON.

CAPTAIN Hume, having confirmed himself executor to his mother, and confirmed a necklace of pearl, pursues Anna Livingston, and John Acheson her husband, for delivery thereof.

The defender ALLEGED, Absolvitor; because, in moveables, property is presumed from possession; and none are put further to instruct their author's right or their own. *Ita est*, the defender hath possessed this necklace for nine or ten years.

It was answered for the pursuer, That, albeit possession infer a right of property in moveables, yet that is but presumptive, and admits of contrary probation by the possessor's oath; or otherwise, by condescending how the proprietor ceased to possess, either by stealing, straying, or by the death of the proprietor; as, in this case, the pursuer, being a soldier abroad, offers to prove that this necklace was in his mother's possession in the time of his mother's sickness whereof she died, and so could not be transmitted by any but by an executor confirmed to her. And, albeit the pursuer, being absent when his mother died, suffered his sister, who was with her mother when she died, to keep this necklace till she died; at which time the defender, being her relation, and with her, got the necklace in her hands; but neither his sister nor the defender could have any right thereto.

It was REPLIED, That the defender's sister got this necklace in gift from her mother, and did wear the same in her mother's life; and, therefore, seeing the sister might have gifted the same, the defender is obliged to instruct no farther than possession: and yet, *ex abundante*, she is content to depone she got the same from the pursuer's sister; which is sufficient to fortify the presumption of