

to be incarcerated, and accepted by him ; Provost Carnegy gave in a new bill, bearing, that, if his probation were taken, it would appear that thir witnesses were the contrivers of his escape, and took money, and so were art and part ; and therefore craved a commission to my Lord Carse to examine both parties' witnesses at Forfar, (which is near his own house,) in the next vacance, and to consider and try the objection against the hability of thir witnesses, in case it appeared that they were suborned. Which desire the Lords, on the 17th June, granted. *Vide* 14th July 1688. *Vol. I. Page 456.*

1688. *July 14.*—Donaldson's action against John Carnegy, Provost of Forfar, mentioned 11th June 1687, is advised. The Lords find the Magistrates of Forfar liable, and decern, in regard of the messenger's execution, which they sustained, especially being adminiculated by the instrumentary witnesses : and also find them liable for the annualrent, notwithstanding of the decision *29th June 1626, Haliburton* ; because there the annualrent was only due *ex lege et via actionis* ; but assoilyie the Town from the penalty of the bond.

And, on a bill given in by Provost Carnegy against Stewart the messenger, craving they would find him liable to relieve them, because he suffered the rebel, by his connivance and corruption, to escape ; the Lords declared they would review the probation, how far it touched the messenger. But he gave in a condescence of the prevarications of the witnesses who had deponed against him, to alleviate and nullify their testimonies. And at most this would only infer William Carnegy's debt against him, but not Donaldson's.

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1688. *July 17.* STEWART of ROSSYTH *against* The EARL of ANNANDALE.

STEWART of Rossyth pursuing the Earl of Annandale for a cautionry of his father's for the Earl of Home ; and, to prove payment of the bygone annual-rents, Annandale producing a fitted account, it was ALLEGED,—The account related to two bonds wherein Annandale's father was bound ; and so the article could not be totally defalked off this bond now pursued on.

The Lords, in regard the other bond could not be produced, to know what sum it contained, they made them equal, and ascribed the half to this bond, on the presumption of law, that, where a thing is indefinite, it resolves into an equality.

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1688. *July 18 and 19.* CLELAND and PATERSON *against* WILLIAM WILSON.

CLELAND and Paterson, two messengers, pursue a reduction and improbation of William Wilson's rights on a tenement in Edinburgh, wherein the Lords had found, before, that, if two comprisings be led for the same debt, the second is a passing from the first, at least to the effect of keeping its legal from expiring. A decision in Dury, *14th December 1621, Faldonside*, was opponed. It was also urged, that, *quoad* bygones, he had *titulum putativum* ;