

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* ;

and so, being *bona fide possessor*, he could not be countable, but only since the date of the interlocutor finding him liable.

Yet the Lords, on Carse's report, find that the defender must count for the sums contained in the first apprising, and conform to the whole rental since his possession, in the terms of the former deliverances, and act of count and reckoning; and assoilyied from the reduction.

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1688. *July 20.*

THE Lords found a subsequent Sheriff-depute could not discharge a fine imposed by a former Sheriff-depute, but that it belonged to his predecessor.

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1688. *July 21.* MAXWELL *against* LAWSON of BEARCROFT.

THE case of Maxwell and Lawson of Bearcroft was decided. It was a removing, against which the exception was; I have a comprising of thir lands: and it being objected, that they were not expressed in it, they offered to prove they were part and pertinent of the lands appraised. And, for eliding it, it was ALLEGED, they were known to be *distincta et separata tenementa* by several appellations, lying in sundry parishes, and holden of divers superiors.

It was unnecessary to burden themselves with all this *ad victoriam causæ*. But, however, a joint probation was allowed; and, writs and witnesses being adduced, the Lords, on advising them, found part and pertinent not proven: and therefore decerned in the removing.

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1688. *July 21.* THE MAGISTRATES of ARBROATH *against* JAMES CARNEY of NEWGATE.

THE Magistrates of the Town of Arbroath pursue James Carnegy of Newgate for purprusion, by inroaching on their marches, whereby he had lost his feu. ALLEGED,—Thir lands holding burgage, the Town was not his superior, but the King, whose bailies and commissioners they were; and so the benefit and casualty of the forfeiture did not accresce to them, but to the King. And he had turned popish to get a gift of it.

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