No 14. by mistake, by false tokens, or the like; and that this was sustained already in a pursuit against her by Mr Alexander Birnie, Advocate, *supra*, and the Bailie of the Abbey Court having decerned against her, and she having suspended, the Lords, on Forret's report, reduced the said decreet, and assoilzied her, unless they would prove she was accessory.

Fol. Dic. v. 2. p. 56. Fountainhall, v. 1. p. 272.

1687. *June.* David Johnston *against* Rankin.

No 15.

In a pursuit for the hire of a horse, it was *alleged* for the defender, That he having ridden him the length of Dunbar, in company with others, very soberly, the horse fell sick and lame, so as he was forced to leave the beast there, which he intimated to the hirer.

The Lords found the defender free of the hire, and of the charges of the horse at Dunbar;

Fol. Dic. v. 2. p. 57. Harcarse, (Summons.) *No* 930. *p.* 261.

1688. *February* 28. Trotter *against* Buchanan.

No 16.

One Trotter having hired a horse from Buchanan in Cockenzie, there is a decreet obtained against him for the horse, or its price; which was suspended on this reason, that having ridden to Leith with him, he was stolen out of a stable there. *Answered*, This was not sufficient, seeing he might pursue the stabler. *Replied*, The *casus fortuitus* must defend both, there being neither *dolus* nor *culpa* qualified against them—The Lords, on Boyne's report, found the reason of suspension relevant to assoilzie him, that the suspender did deliver the horse to the keeper of a common stable, to be kept in his stable; and that the horse was stolen out of that stable: And also sustain the charger's answer, that the suspender, either *scripto vel juramento*, promised to satisfy the charger for the horse. But it may be considered how far the edict *nautæ, caupones, stabularii*, may reach at least the stabler; seeing Patrick Steel was made liable for the Master of Forbes's cloak stolen in his house, though it was not proved that his servants did it. No 2. p. 9233.

Fol. Dic. v. 2. p. 57. Fountainhall, v. 1. p. 501.

*** Harcarse reports this case.

No 16.

ONE being pursued for the price of a horse hired from the Pans to Leith, where the conductor delivered him to a stabler, and he was stolen away, without the stables, by some who broke the stable;

THE LORDS assoilzied the defender; because, *conductor non tenetur præstare casus fortuitos.*

Harcarse, (COMMODATUM.) *No* 251. *p.* 59.

1749. *June* 2. ——— *against* DAVIDSON.

No 17.
A wood of great extent was employed in grazing, and some cattle were amissing. The keeper was considered to be liable for ordinary diligence, in looking after them.

THE wood of Darnway, belonging to the Earl of Moray, being employed for grazing cattle, put in by the country for a certain small grass-mail, brought a process before the Sheriff-substitute of Elgin against Davidson, the Earl's servant, who had received from him six beasts to be grazed in the wood, either to restore his beasts that were amissing, or to pay the value.

The defender acknowledged the receipt of the beasts; but *pleaded* in defence, That, as the wood was of a great extent, fenced on one side only by the water of Findhorn, which, in many places, was fordable, and the rest of it very insufficiently inclosed, and well known to be so by the country, who put in their cattle; such as put cattle into it a-grazing were presumed to run the hazard of their straying or being stolen: And further, that, as the defender was in use to certify such as put in cattle, that they were to run all hazards, so the pursuer had been certified thereof. And the Sheriff having allowed a proof, before answer, on this last allegeance, and on the value of the cattle, a proof was brought, in general, of the park-keeper's being in use so to certify the inputters, as alleged; but no proof being brought, that the pursuer, in particular, had been so certified, the Sheriff-substitute "Found the defender liable in the sum of as the value of the cattle; and decerned."

The debate, at discussing the suspension of this decree, being reported by Lord Easdale, Probationer, his opinion was, That the edict *nautæ, caupones*, under which the charger argued the case to fall, was noways applicable to this case, as it was a constitution limited to the particulars therein expressed, and proceeding on special reasons; but that the case was to be determined by the rules of law *in locationibus*; and the LORDS, upon advising, were of the same opinion.

But having further given it as his opinion, That, as the locator was only liable for the *culpa levis*, and such ordinary diligence as a man adhibits in his