

aliment, or a soldier's pay, nor in the case of Sir Robert Murray, Justice-clerk, his pension, which was found not arrestable ; therefore the clerk should be liable.

He ALLEGED, That what he did was by order and warrant of my Lord Mersington, then Ordinary, who had the advice of the President, and four or five of the Lords, it being in vacance, rather than to suffer Park to be affronted in the mean time, to loose the arrestment. This defence being acknowledged by the Lords present, they thought it unworthy to allow the clerk to suffer for what he did by their authority and warrant, though only verbal ; and, therefore, the Lords present at the communing offered to pay the sum out of their own pockets. The rest of the Lords, from a generous emulation, refused to be ex-
 emed, and so it was laid upon the whole, upon an assignation to the debt against Park's heirs ; though there be no hopes or expectation of relief. The sum is small ; however, it is an instance of that rule of law, *si iudex litem suam fecerit, damnum partis læsæ resarcire tenetur*, whereof there are but few examples. Vol. I. Page 634.

1694. July 6 and 19. SIR DAVID CARNEGIE of PITTARROW, *against* SIR ALEXANDER FALCONER of GLENFARQUHAR.

July 6.—SIR David Carnegie of Pittarrow against Sir Alexander Falconer of Glenfarquhar, upon a decret of miln multures, and astriction of Sir Alexander's lands of Scotston and Powburn, to Pittarrow's miln of Conveth, which was feued out to the Wishearts of Pittarrow, by the abbots of Aberbrothock in 1225. Sir Alexander craved to be reponed ; in regard the point of right was not *deductum in iudicium*, nor the declarator of astriction insisted in on the one side, nor the declarator of exemption and immunity on the other. Sir David opposed his decreets ; and though, at first, it was only an action for abstracted multures, yet the point of right came in to be determined in the debate. The Lords found it proper, ere they would decide, to name two of their number, with the reporter, to essay an understanding between the parties. Vol. I. Page 628.

July 19.—The case of Pittarrow against Glenfarquhar, mentioned 6th current, was again reported : and, after perusal of the decreets, the Lords, by the plurality of five against four, found the point of right of the constitution of the thirlage was not *deductum in iudicium* ; and, therefore, opened the decret, and allowed Glenfarquhar's lawyers to be heard on the material justice of the cause, and whether his lands were thirled or not, or if he had prescribed an exemption and immunity.

In this process, it had been debated, whether the master's farm was thirled with the *omnia grana crescentia*, seeing it excepted nothing but seed and teind. —See, for this, Durie, 11th July 1621, *Keith*. Vol. I. Page 635.

1694. July 19. The TOWN of EDINBURGH *against* SIR WILLIAM BINNY.

THE Town of Edinburgh against Sir William Binny, about the property of a piece of waste ground lying at the Timber-hoof at Leith. He founded on his