

and are tied to pay two merks for each undelivered boll, which will not compensate the damage we sustain by the want of the victual. *2do.* You should have suspended that act of the Lords, and represented that *res* was not *integra*, because you had sold the victual; and so you was *in culpa et mora, et loco facti impræstabilis venit damnum et interesse.*

The Lords looked on it as a fraudulent contrivance amongst them, the victual being sold to others for a greater price than the chargers were to have paid: Therefore they decerned against him; though, in the general, such casual events and obstructions, disabling one from performing his bargain, should liberate him from the same. *Vid. l. 33, De locati.* But, in all such contracts, they should only give warrandice from their own facts and deeds. *Vol. I. Page 761.*

1697. *January 28.* The KING'S ADVOCATE and some of the VASSALS of SCOON against The VISCOUNT of STORMONT.

THE King's Advocate, and some of the Vassals of the Abbacy of Scoon, pursue a declarator against the Viscount of Stormont, Lord of Ereccion of that Abbacy, That, though he had right to their feu-duties till redeemed, yet he had no right to exact the services in their charters of harriage and carriage, or the like; but the same belonged to the King, their superior.

It was ALLEGED,---No process at the King's Advocate's instance, for he can pursue none of the King's vassals without a special mandate and warrant from his Majesty, else he might vex all the subjects; as was justly decided, *20th January 1680, The Earl of Southesk against Melgum and Others.* And as to the heritors concurring with the King's Advocate, No process at their instance either; because their seasines were not given out *ab initio* with the process, but dropped in since.

ANSWERED to the *first*, It is only in reductions and improbations that the King's Advocate needs a special warrant; *second*, The feuars' rights are now produced.

REPLIED,---They must show a right before the Act of Annexation 1587.

Sundry of the Lords were clear to sustain process, on the defender's seeing the production in the clerk's hands: But others thought it *mali exempli* that such unfavourable pursuits should be encouraged, (for they found the King's Advocate cannot insist alone;) and they refused process till the titles of the vassals were given out to be seen *in communi forma.* *Vol. I. Page 761.*

1697. *February 2.*

I went to the Outer-House; so the observations will be fewer than at another time.