

1700. *July 25.* JAMES VEITCH *against* THOMAS IRVING.

GEORGE Johnston, merchant in Dumfries, being debtor to James Veitch and Thomas Irving, and having a cargo of tobacco brought in to the port of Whitehaven in England, though designed for Dumfries, yet behoved first to touch and enter there, because come from the English Plantations; and Johnston deceasing shortly after, Veitch gets himself named administrator by the official of the County Palatine of Chester, and Irving confirms himself executor-creditor in Scotland; and they competing, Veitch *CONTENDED*,—The goods being in England, and he having first obtained his letters of administration, and by virtue thereof disposed of the goods, *sibi vigilabat*; and they cannot repeat from him.

*ANSWERED*,—*Mobilia sequuntur personam*; and Johnston having lived and died in Scotland, they must be confirmed there, and his succession must be regulated conform to our laws; especially seeing the goods were not brought in there with a design to unload, but only *moræ causâ* to stop seizure; and it were hard to put Johnston's creditors to go to the Prerogative Court of York to debate their interests with Veitch.

The Lords appointed trial to be taken, before answer, whether the ship touched there with a design to unload, or only to satisfy the English laws of navigation to their plantations; and if the said Veitch intromitted before his administration or after; and whether Irving has been *in mora*.

*Vol. II. Page 106.*

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1700. *July 25.* SIR PATRICK HOME *against* The EARL of HOME.

IN the pursuit, Sir Patrick Home, advocate, against the Earl of Home, for proving that the Earl was paid of all sums due to him on the Abbacy of Coldingham, by intromission with the lands and teinds of the said lordship; and, after a long count and reckoning, the Earl at last alleging he was not accountable, because his right bore an express clause, *fructibus in sortem non computandis*; and Sir Patrick contending, that that was an usurious paction, contrary to law; the Lords sustained the contract, and found the Earl's right unaccountable till redemption. Then Sir Patrick offered to prove his sums paid *aliunde*, as by the price of the teinds of Stichel, AuldCambus, &c. The Lords found the documents adduced not sufficient to prove these. Thereafter the Earl having extracted his decret-absolvitor, and Sir Patrick complaining of the precipitation used therein, after he had craved a scroll; and this being tried, the Lords found the decret was delivered to the Earl before any scroll was sought; and so, refusing to recal the decret, Sir Patrick gave in his protestation for remeid of law to the Parliament.

*Vol. II. Page 106.*

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1700. *July 27.* ROBERT FORRESTER *against* CAPTAIN SLETZER.

ROBERT Forrester, late soldier, pursuing Captain Sletzer for some remains of his pay during twenty-eight months of his service :

ALLEGED,—He must have retention of fourpence *per diem* out of his pay of tenpence, on the account of clothing-money, conform to the custom of the army.

ANSWERED,—He was content to bear his share of the poundage, or the invalid's money, but for clothing there could be no retention, because he received no pay from his captain during all that time ; and, *esto* there were a practice among the captains, it was *corruptela* rather than *consuetudo* ; neither was there any instruction or article allowing the same.

REPLIED,—This retention was used in Flanders, and all other places ; and his Majesty knew of it, and allotted it as one of the perquisites of the officers ; and it could not be taken from them.

Some thought this question more competent before the Treasury or a court-martial than the Session. Others were for trying the custom ; but the generality of the Lords thought it an act of oppression to detain any part of the poor soldiers' pay on account of clothing, which was never given them ; and therefore repelled the Captain's allegiance. Which interlocutor was much disrelished by the officers of the army.

*Vol. II. Page 106.*

1700. July 31. ROBERT BRUCE *against* BRUCE of EARLSHALL'S FACTOR.

MR Robert Bruce, brother to Earlshall, gave in a petition, representing, That his brother having become unfit for business, and himself having been several years abroad, as chaplain to one of the King's men of war, the affairs of that estate had come to be neglected, and run in confusion ; therefore craved to remove the present factor, and offered sufficient caution to the creditors if he were authorized to be factor.

The Lords did not think it safe, for the interest of the creditors, to put the apparent heir's brother in possession of a burdened estate, though, by mismanagement, the debt had considerably grown ; and therefore refused the desire of his bill :

But the Earl of Southesk, (who is a considerable creditor,) and his tutors, craving one M'Lauchlan to be made factor, and who offered to live in the house, which would be very beneficial to all the creditors, seeing he would prevent any farther cutting of the planting, which the laird had hitherto done : And it being ANSWERED, That M'Lauchlan was Southesk's chamberlain ; and the placing of him were to put my Lord in possession, to the prejudice of all the rest of the creditors ; and to give him the house to dwell in, was to dispossess the laird summarily without a warning, who expected a considerable reversion of his estate, after payment of the creditors :

The Lords refused to change the present factor, or to dispossess the heir from the mansion-house, now in the end of a session ; but ordained John Graham, who is still the factor, to see that no more of the policy or planting be spoiled ; but prejudice to them to apply to the Sheriff of Fife for the bygone damages.

*Vol. II. Page 107.*