

*endus est.* And doubtless, the Lords' suspension here, has the same effect with the *novi operis nunciatio* among the Romans.

The Lords fined the Viscountess in L100, for contempt of authority, and the pursuer's expenses; and stopped the going of the mill till the first day of March then next, but refused to demolish the mill. And allowed both parties to proceed to have the point of right determined in the meantime.

*Act.* Isla. *Alt.* Boswel. Mackenzie, *Clerk.*

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1715. *February.* 1. THOMAS HOPE of Rankeillor, Advocate, *against* JAMES CULBERTSON and PATRICK GOODALE, Baxters.

THERE being a contract in 1712, betwixt Rankeillor and these Baxters, whereby he sells them seventy bolls of wheat, to be delivered yearly for five years, on the 1st of July, at Leith, they being at the expense of freight, shore-dues, &c. and they paying Merchinston's price, with abatement of one shilling per boll; containing penalties, &c. The first two crops went over without any debate; the Baxters themselves having gone over, even after the first of July, and hired their own boat, and came along with the victual. But Rankeillor, expecting they would do the like the third year, waited their conveniency; but finding they delayed, he instrumented them upon the 24th of July to receive the victual: and it having arrived upon the 29th, he again instrumented them to receive it at the shore; and they absenting themselves, the same was, by order of the Bailie of Leith, put up in a loft. And this case coming to be debated in a suspension:

It was ALLEGED for the suspenders,—That they could not be liable to receive the victual, because the charger had not observed his part of the contract to them, by delivering the victual at Leith upon the first of July, as was stipulated.

ANSWERED for the charger,—That that was owing to the suspenders themselves, who had taken a method different from the precise rule in the contract for their own conveniency. *1mo.* In not requiring it, precisely at the time, but both the years receiving it several days after. *2do,* In not allowing the charger to freight, but going over themselves. Therefore, though *dies interpellat*, yet their former practice having both altered the day and method of transportation, this certainly excuses the not precise performance; unless they had given some intimation, that whatever they had done formerly, the charger this year was to perform *in terminis specificis.* *3tio,* They could not subsume that they sustained any loss by this small delay: so that it is always a good answer in such cases, *nihil tibi deest.*

The Lords repelled the reason of suspension, and found the letters orderly proceeded for the principal sum as liquidated by Merchinston's declaration: but suspended for the penalty.

*Act.* Sir Walter Pringle, &c. *Alt.* Horn. Mackenzie, *Clerk.*

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