

ing the question was betwixt the Kirk-session and Drumkinton, and the Town's right was only brought in *incidenter*, as a defence to Drumkinton; therefore unanimously found no expenses due on account of that process. The appeal was likewise only in the name of Drumkinton, who, by the decree of the House of Lords, was put in quiet and peaceable possession of the church. Therefore found no expenses due for the appeal neither.

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1739. July 6. ——— against ———.

THIS was a petition craving letters of loosing an arrestment laid on during a dependance which affected the petitioner's whole substance and hindered him from uplifting any of his effects.

The Lords ordained the arrestment to be loosed upon his finding caution for a limited sum, which, in this case, was not one fifth of the claim.

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1739. July 10. HEIRS of SIR JAMES ROCHEAD *against* EXECUTORS.

THE question here was, Whether a moveable bond to heirs and executors compensates a bond secluding executors?

The Lords found, That it did, upon this specialty, that the money lent upon the moveable bond appeared evidently to be given in payment of the heritable bond, though there was a bond taken rather than a discharge, for certain reasons of expediency. As to the general point, some of the Lords were not clear.

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1739. July 10. DAVID KINLOCH *against* FULLERTON.

[C. Home, No. 125.]

By the law of England, bills, promissory notes, and merchants' accounts only burden the executry, but do not affect the heir. The question here was, Whether such bills, &c. granted in England, could affect the heritage in Scotland?

The Lords found they did: because, being deeds, which, of their own nature, were valid by the law of Scotland, there was no reason for refusing them the full extent that law had given them. The *locus contractus* regulates the form of any deed or obligation, but never the subject which it affects; thus the law of England will regulate the form of a testament there, but will never extend it to heritage here in Scotland. However, Drummore was of