

No 10. "THE LORDS find the complaint relevant and proved, and that the respondent is liable to repeat to the complainer the sum of L. 3 : 6 : 1 Sterling of expenses, illegally exacted by him ; for which sum they decern against him ; and also decern against him for the expenses of this complaint. But, in respect of the respondent's candid acknowledgment above mentioned, and his ignorance of the proceedings in the year 1738, and of the act of sederunt then made, the LORDS proceed against the respondent to no higher censure ; and ordain this interlocutor to be recorded in the books of sederunt."

N. B. By the 4th article of the late injunctions issued by the Lyon King of Arms, with the advice of the Lords of Council and Session, in terms of act 127th, Parl. 1592, appointed to be observed by all messengers at arms within Scotland, in place of the old injunctions formerly established, "It is ordained, that no messenger, in executing diligence of any kind, shall exact, take, or receive, on his own account, from the person against whom such diligence is executed, or meant to be executed, any sum whatsoever, under any name or pretence whatsoever, as he shall be answerable in any court competent."

Act. *R. Sinclair.*

Alt. *B. W. M'Leod.*

Clerk, *Ross.*

*Fol. Dic. v. 4. p. 1. Fac. Col. No 32. p. 86.*

No 11. 1776. July 19. GILCHRIST against SUTHERLAND.

DECREE being given against a messenger and his cautioner for payment of a debt in a diligence which the former had repeatedly delayed to execute, notwithstanding of peremptory orders from his employer, it was urged in a suspension for the cautioner, that the creditor could qualify no damage, as the debtor remained still solvent. *Answered*, There is no necessity to qualify actual damage, it is enough that the messenger has not done his duty, which, if he had done, the debt, in all probability would have been paid. Another reason of suspension was, that the diligence was in the name of a company which was dissolved before it was issued, therefore there was no proper warrant. *Answered*, This is a matter that does not fall under the cognizance of a messenger, who must execute every diligence that is *ex facie* formal. THE LORDS found the letters orderly proceeded on. See APPENDIX.

*Fol. Dic. v. 4. p. 2.*

No 12. 1776. December 19. A. against B.

THE LORDS found, That a messenger was not entitled to take fees for executing diligence from a debtor. See APPENDIX.

*Fol. Dic. v. 4. p. 1.*