

thought the duty of the messenger was to obey his orders; and as, in this case, he had not, they found him liable for the debt.

1776. *December 18.* PATRICK RITCHIE *against* ANDREW PITCAIRN.

ANDREW Pitcairn, writer in Dundee, had been intrusted by Patrick Ritchie, baker there, in purchasing a house from Maclean, mariner in Dundee, for whom Pitcairn was also doer. Ritchie alleged, that he had made the purchase upon the faith of an opinion given him by Pitcairn, that he might make the purchase safely; whereas, now, it appeared that he could not and did not make the purchase safely, on account of an heritable debt due to Jean Reid, which Pitcairn not only knew of, but had wrote out an heritable bond for the same.

Pitcairn, on the other hand, set forth, that, at the time he gave his opinion, he told Ritchie of the heritable bond to Reid, and indeed that the same was known to half the town of Dundee; but, that he was of opinion that the other part of Maclean's subjects remaining unsold were more than sufficient to pay said incumbrance: That they were bought by Ritchie himself since that time, and the price applied for payment of Reid's debt; but that, by the fall of houses in Dundee since the year 1772, there would be a shortcoming. It was further alleged, that part of the price of the first purchase made by Ritchie, had been made to Pitcairn in order to apply it in part payment of the debt to Reid. But it was answered, that although it was true that Pitcairn had received part of said price, but not for the purposes aforesaid, yet it was equally true that he had applied it according to Maclean's directions, and had cleared with him for it.

In an action of damages at Ritchie's instance against Pitcairn, before Lord Kennet, his Lordship, 5th December 1775, "ordained the pursuer to give in a condescence of facts he alleges and offers to prove, in order to infer damages."

Which being given in with answers, he sustained the defences and assoilyed, 5th March 1776.

Afterwards, upon a reference to oath, Pitcairn was examined; and, upon advising thereof, the Ordinary found that the oath did not prove the points referred to it, and therefore adhered. And this day, upon advising bill and answers, the Lords adhered.

1778. *February 5.* FACTOR for the CHILDREN of ARCHIBALD M'HARG *against* M'LAURROCH.

ARCHIBALD M'Harg, writer, being employed, *in sua arte*, to make up titles to the estate of Nether Craigenlay, in the person of M'Laurroch, his client, he did so. But it was alleged, that he did so in an improper and inept manner, by entering him heir in general to his grandfather, and not heir of provi-

sion on a contract of marriage. He had both characters in him; so that it was not agreed that M'Harg had committed any mistake. However, independent of this, the Lords sustained action for his account, and the Lord Ellick, Ordinary, having decerned for his account, the Lords, on a reclaiming petition without answers, adhered. It would have been of very dangerous consequence had they done otherways. The neglect must be of a different kind to infer damages.

REVOCATION ON DEATH-BED. See DEATH-BED.

RIOT ACT,

1. Geo. I. c. 5.

1775. *March 4.* MILN of MILNFIELD *against* The COUNTY of PERTH.

ON the 8th of January 1773, a riotous mob made an unprovoked attack on the house of Milnfield, demolished the house, destroyed the furniture, plate, and papers. In an action on the statute of Geo. I. called the Riot Act, the Lords pronounced this interlocutor:—"The Lords find it averred by the pursuer, and not denied by the defenders, that, at the time libelled, a great number of persons, amounting to several hundreds, being unlawfully, riotously, and tumultuously assembled to the disturbance of the public peace, did repair to the house of Milnfield in the county of Perth, belonging to the pursuer, and, having forcibly entered said house, did unlawfully, and with force, demolish and pull down part of said house: And find it averred by the pursuer, and ascertained by the report of tradesmen, and not objected to by the defenders, that the pursuer did thereby sustain damage to the extent of £79:19s.; therefore, and in terms of the Act 1st of Geo. the First, libelled on, find the defenders, the householders residing within the county of Perth, liable, conjunctly and severally, in the said sum to the pursuer; decern against them, or any two of them, for said sum accordingly; but find the defenders not liable in the other damages claimed by the pursuer, upon account of furniture destroyed, and otherways; and sist execution against the persons hereby found liable, till the 25th of July next, in order that the Justices of the Peace of the county of Perth may, betwixt and that time, tax and assess, rateably and proportionally, according to their abilities, the whole householders residing within the said