

behoof this assignation was taken ; which was referred to the charger's oath, and the liquidation of the coal to Moristoune's.

The Lords did supersede to find the letters orderly proceeded upon the bond, until the charger and Moristoune had declared and deponed ; That thereafter, the price of the coal being liquidated, the compensation should be allowed *pro tanto*.

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1675. January 19. THOMAS INGLIS *against* The COLLECTOR of the TAXATION.

THOMAS Inglis of Stratyrum, being obliged, by bond, to pay the taxations due since the year 1633 to the collector, or to enter his son prisoner in the tolbooth at a certain day ; being charged for payment, did suspend upon this reason,—That the obligation being alternative, *et electio est debitoris*, and he is content to produce his son ; but, if he were produced, he could not now be imprisoned for the said debt ; because the late act of grace and proclamation discharges all these taxations in favours of the subjects.

It was ANSWERED, That, the day for entering his son prisoner being long since past, the suspender did lose the benefit of the alternative, and so was liable in payment. To the second it was answered, That there is an exception in the proclamation of all bonds granted for taxation.

The Lords did find, That, the day being long since elapsed, the offer to make the son prisoner was not receivable, albeit the charger had not required him upon the special day, nor taken instruments upon their refusal ; because, in law, *dies interpellit debitorem* ; and he ought to have presented to the bailie, or keeper of the tolbooth, his son, and taken instruments thereupon, that it was not his fault that he was not imprisoned. And, as to the second, they found the charger was in the case of the exception of the proclamation, the bond being prior thereto ; as likewise, that there being a reservation in favours of Duke Hamilton, that he might pursue and uplift until he should fit his account, and it were found he were paid, the charge, at the collector's instance, was well founded, notwithstanding of the proclamation.

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1675. January 22. SIR ALEXANDER M'CULLOCH *against* GEORGE MOSSMAN.

SIR Alexander being charged, at Mossman's instance, to relieve him at the hands of William Lockhart, for the sum of £1000, he did suspend upon this reason,—That the charger was never distressed, neither could be distressed at this time, William Lockhart being dead, and no person representing him had any right established in their person, whereupon the charger could be pursued, or, upon payment, could grant a discharge to Mossman of his bond ; so that it was *factum imprestable*, and no damage or interest could be craved for not performance ; which is all the law allows, seeing the charger hath never been distressed : likeas, the suspender offers to find caution sufficient to relieve him whensoever he shall be distressed.

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