

1688. *February 21.* MAGNUS PRINCE, &c. Tacksmen of the Customs, *against* JAMES CARMICHAEL.

MAGNUS Prince, and other Tacksmen of the Customs, pursue James Carmichael, brewer, upon his contract, to relieve them of sundry debts. ALLEGED,—His agreement bears a mutual obligation that the tacksmen shall pay in to him the excise; *ita est* he wants yet for Thomas Robertson's and Charles Murray's brewings. ANSWERED,—This compensation was not *inter eosdem*, seeing the chargers had paid their excise, and he had action against the deficient.

REPLIED,—They were all bound to him, and it behoved to be understood conjunctly and severally, the words being “they paying;” which is *oratio indefinita æquipollens universali, i. e.* they all paying.

The Lords found them all liable conjunctly and severally for one another's excise; and refused relief till all paid for their brewings, seeing the excise was the only subject out of which he could operate relief.

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1688. *February 22.* JOHN CALLANDER *against* — RAE and ANDREW FORRESTER.

John Callander, smith, having obtained a decret against Rae, a barber, and Andrew Forrester, bower, for £1400, as the expenses of the process carried on by the King's Tradesmen against the Town of Edinburgh, for declaring them free of cess and other burdens, as mentioned 20th March 1684, they being bound conjunctly and severally with the rest for reimbursing him:—it was suspended, 1mo, Because, by a posterior agreement, they stood only bound *pro rata*. 2do, He had lost his expenses by his prevarication in disclaiming the pursuit before the Town Council of Edinburgh; *et mandatarius excedens fines mandati perdit actionem contrariam pro impensis*; and much more if he betray his trust.

The Lords, before answer, ordained the suspenders to depone, whether they knew of the alleged disclamation when they subscribed the last stated account, bearing the obligation on the back thereof, for payment of the total sums therein mentioned; or what time they came to understand the foresaid disclamation: and ordained them to produce the said disclamation. Likeas, they ordained the charger to depone what expenses he truly depursed before the said disclamation, as also what he truly expended after it, upon account of the pursuit; for the Lords resolved to give him no expenses since his disclamation, but only those before.

The Deacon having reclaimed against this, and the Lords having considered his bill with the answers, on the 28th February, they stopped their foresaid interlocutor, and refused to take the oaths of Rae and Forrester, the suspenders, anent their knowledge of the said declamation; which they found has been understood by them in the process before the Commissaries: (the mistake of

this was, that one procurator proponed promiscuously a defence for all the defenders, though all of them did not know of the disclamation, but only some :) and therefore the Lords ordained John Callander to depone upon the verity of the haill articles of his account; reserving to themselves to modify the charges expended by him, as they see cause, because he carried on several other causes of his own under the pretence of this. *Vol. I. Page 498.*

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1688. *February 22.* WALTER GIBSON *against* CRAWFURD of CARSBURN.

WALTER Gibson, Provost of Glasgow, his charge against Crawford of Carsburn, on an Admiral-decree, was reported by Collington. The Lords ordained merchants to give their opinion, whether, if a ship be sold where the buyer undertakes the burden of the outreik, if masts will fall under the notion of outreik, seeing she could not be a complete ship without masts. *Vide l. 44 D. de Evict.*; Molloy, *de Jure Maritimo*, p. 194; and Loccenius, *lib. 1, c. 2. 2do*, To give their advice and report what is the custom of the Carribbee islands, of giving gratifications to the governors, that their ships may be declared free; and if the ship bears all or only a third part of it; for which Molloy was cited, *lib. 2, cap. 6.* And found no annualrent due for the outreik, and that they were not such *impensæ in navem* as bore annualrent, as victuals, provisions, and bottomry do. *Vol. I. Page 499.*

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1688. *February 28.* LADY CARLOURY *against* Her HUSBAND'S CREDITORS.

THE young Lady Carloury having given in a bill for an aliment to herself and children out of her husband's estate;—the Lords gave her £50 sterling. Which was thought very hard, where the estate will not pay the creditors' annualrents. *Vol. I. Page 500.*

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1688. *February 28.* SIR ROBERT PRESTON'S CHILDREN *against* His CREDITORS.

THE Children of Sir Robert Preston of that ilk, upon a bill, got a modification, from their father's creditors, of 600 merks for this year, during the dependence of their count and reckoning. *Vol. I. Page 500.*

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1688. *February 28.* JAMES KER *against* JOHN GIBSON.

JAMES Ker gave in a bill against John Gibson, his wife's father, showing he