

1692. *December 28.* ALEXANDER YOUNG, Merchant, *against* SUTTIE and HEPBURN, his Curator.

ALEXANDER YOUNG, merchant, against Suttie, and Robert Hepburn, his curator. The Lords found Young had done enough, by intimating the plea to Suttie, the co-cautioner's heir, and that he was not *in culpa* in not extracting and taking out the commission, seeing it was clogged with Young's finding caution, which he was not able to do. Suttie's curator should have engaged with him, to have promoted the commission, he being as much concerned in it as Young; though it was ALLEGED that he was not bound to be cautioner for him, and that Young should have applied to the Lords by a bill, either to have been free of the caution, or to have made the co-cautioner concur with him. But the Lords reserved action of repetition, as accords, against Bain, who had obtained the decret against Young, that, if they yet instruct he had received payment, by bills on the factor, of the sums he took decret for, his heir should refund *pro tanto*. Only he will obtrude his decret *in foro*, on a circumduction for not proving the said partial payments by the factor's compt-book. *Vol. I. page 539.*

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1692. *December 28.* STEWART *against* GRANT of ELCHIES.

STEWART in Inverness, pursuing Grant of Elchies, brother to the Laird of Grant, for his quarters at his house, when Lieutenant-Colonel to his brother's regiment, ALLEGED,—The treasury was owing him more; and by the act of Parliament, 1690, the three months cess and hearth-money was appointed for their payment, and he was content to give him a precept on his arrears.

The Lords repelled this, and found him liable, being an officer, and it was furnished not to his company, but to himself. And remembered, that in Fleming the Baxter's case against Major George Winram, for bread furnished to the Castle of Edinburgh, they would not find it a public debt, seeing they contracted on the faith of the private parties. *Vol. I. page 540.*

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1692. *December 28.* WILLIAM PATON, &c. CREDITORS of ELIZABETH STEWART, Petitioners.

WILLIAM PATON, and other creditors of Elizabeth Stewart, who was married to Mr. George Winram, resolving to bind the passive titles on him to pay her debt; and finding that Bailie Chartris had advanced far in a process against him for a debt of his said wife's, as representing her, and fearing it might be agreed and abstracted, therefore they craved the Lords would grant a warrant to the clerk not to give up the process till theirs came in.

The Lords thought as to the depositions of witnesses, and other *instrumenta*

*litis*, this might be granted ; but refused it as to principal writs, which could not be refused to parties, except where they were quarrelled as false.

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1692. *December 29.* MAJOR HEW BUNTAIN *against* The EARL OF ABERDEEN.

MAJOR HEW BUNTAIN against the Earl of Aberdeen ; who ALLEGED he should have applied to the King or Treasury, in 1682, and gotten payment of his dues for his service, and cannot recur now against the Earl, who uplifted them by warrant of the King's letter.

The Lords found it relevant for Major Buntain to prove, that it was the custom of the keepers of the Great Seal to get the third of the Chancellor's dues, and that this was a distinct perquisite of the office from furnishing the war, and appending the Seal ; and admitted to his probation, that the Earl of Aberdeen uplifted this from Enterkine, *scripto vel juramento*. Some of the Lords inclined to modify to less, in regard Major Buntain was then at no trouble, whereas in the Duke of Rothes's time, he was a domestic, and did other services for it.

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1692. *December 29.* MACKMICHAN *against* ADAIR.

MACKMICHAN contra Adair. The Lords remitted the cause, with this instruction that the pursuer should prove *quomodo desiit possidere*, whether by stealing, straying, or the like ; that it may appear it was not by a sale, donation, or the like titles transmitting dominion ; and farther proving that the horse was in the defender's possession the time of the citation, or that he *dolo desiit possidere* before. For if they had transmitted him before the citation, then the *rei vindicatio* ceased, he being no more possessor.

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1692. *November 30 and December 30.* ROBERT STEWART of Innerwhat, *against* The MASTER OF SALTON.

*Nov. 30.*—ROBERT STEWART of Innerwhat, messenger, contra the MASTER OF SALTON ; the Lords found the letters not obligatory upon the Master to pay the sum ; but that they imported thir two things ; *1mo*, That he ought to have large damages modified to him for his expenses. *2do*, That the Master ought not to protect his grandfather's person, nor his liferent against this debt of Messie's, by the gift of the liferent escheat, or any other right standing in his person.

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