

1700. *July 25.* JAMES VEITCH *against* THOMAS IRVING.

GEORGE Johnston, merchant in Dumfries, being debtor to James Veitch and Thomas Irving, and having a cargo of tobacco brought in to the port of Whitehaven in England, though designed for Dumfries, yet behoved first to touch and enter there, because come from the English Plantations; and Johnston deceasing shortly after, Veitch gets himself named administrator by the official of the County Palatine of Chester, and Irving confirms himself executor-creditor in Scotland; and they competing, Veitch *CONTENDED*,—The goods being in England, and he having first obtained his letters of administration, and by virtue thereof disposed of the goods, *sibi vigilabat*; and they cannot repeat from him.

*ANSWERED*,—*Mobilia sequuntur personam*; and Johnston having lived and died in Scotland, they must be confirmed there, and his succession must be regulated conform to our laws; especially seeing the goods were not brought in there with a design to unload, but only *moræ causâ* to stop seizure; and it were hard to put Johnston's creditors to go to the Prerogative Court of York to debate their interests with Veitch.

The Lords appointed trial to be taken, before answer, whether the ship touched there with a design to unload, or only to satisfy the English laws of navigation to their plantations; and if the said Veitch intromitted before his administration or after; and whether Irving has been *in mora*.

*Vol. II. Page 106.*

---

1700. *July 25.* SIR PATRICK HOME *against* The EARL of HOME.

IN the pursuit, Sir Patrick Home, advocate, against the Earl of Home, for proving that the Earl was paid of all sums due to him on the Abbacy of Coldingham, by intromission with the lands and teinds of the said lordship; and, after a long count and reckoning, the Earl at last alleging he was not accountable, because his right bore an express clause, *fructibus in sortem non computandis*; and Sir Patrick contending, that that was an usurious paction, contrary to law; the Lords sustained the contract, and found the Earl's right unaccountable till redemption. Then Sir Patrick offered to prove his sums paid *aliunde*, as by the price of the teinds of Stichel, AuldCambus, &c. The Lords found the documents adduced not sufficient to prove these. Thereafter the Earl having extracted his decret-absolvitor, and Sir Patrick complaining of the precipitation used therein, after he had craved a scroll; and this being tried, the Lords found the decret was delivered to the Earl before any scroll was sought; and so, refusing to recal the decret, Sir Patrick gave in his protestation for remeid of law to the Parliament.

*Vol. II. Page 106.*

---

1700. *July 27.* ROBERT FORRESTER *against* CAPTAIN SLETZER.

ROBERT Forrester, late soldier, pursuing Captain Sletzer for some remains of his pay during twenty-eight months of his service :