

sonal attendance before them, as the great inquest of the nation, for inspection and trial; otherwise a patched-up report might be procured by designing persons, in executing a commission, bearing the man's recovery where it is not true.

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1701. *December 31.* DAVID FRENCH, &C. CREDITORS of EDMONSTON of CARDEN, *against* ARCHIBALD ROBERTSON, Factor of Carden.

DAVID French, and other Creditors of Edmonston of Carden, against Archibald Robertson, factor thereof. They craved he might be liable in annualrent, within a year after the rents fell due, which was allowed for ingetting of them, conform to the Act of Sederunt in July 1690.

ANSWERED,—He was ignorant of that Act, it never being intimated to him; and the Act itself has never been in observance, and was only calculated where there were great balances in factors' hands, and not for small rests; and which he could not lend out upon annualrent, because he knew not how soon creditors might get precepts and warrants upon him; and so he behoved to keep it to answer their payments.

REPLIED,—The Act cannot be in desuetude in so short a time; neither has it ever been proponed upon and repelled; and the Act is most just, that they should not *lucrari* to the damage of the Creditors; and the Act *non distinguit* whether the balance be great or small.

The Lords found the Factor liable in annualrent, in terms of the Act of Sederunt; and so confirmed it by a decision.

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1701. *December 31.* WILLIAM CUTHBERTSON *against* ISABEL REID and JAMES BAR.

WILLIAM Cuthbertson, merchant in Tranent, pursues Isabel Reid and James Bar, Albany herald, her husband, for £219, as the price of goods delivered by him to the said Isabel Reid's father, before the Sheriff of Edinburgh; and adducing two witnesses to prove the delivery of the goods, Bar OBJECTED against them, That they could not be received, because they had appeared partial, and too zealously concerned, in having come from Dunse, where they dwell, to Edinburgh, on a letter wrote to them by Cuthbertson, the pursuer, desiring them to come, to the effect that he, finding them in town, might give them a citation to be witnesses in his action against Reid; and so, being ultroneous, were not receivable; and though they acknowledged, upon oath, that he had invited them in, and accordingly they had come and got their copies to appear as witnesses, yet the Sheriff had received them as habile and competent. Bar raises advocacy, in respect the Sheriff had committed iniquity in sustaining them.

ANSWERED,—All he did was legal,—to write to them, to know when their other business would call them in to Edinburgh, that, on their incoming, he might cite them; seeing they lived without the Sheriff's territory, and so could not be cited without a supplement.