

1710. *June 13.* WILLIAM CARRUTHERS *against* JAMES FINLAYSON.

CARRUTHERS and Finlayson. James Finlayson, merchant in Edinburgh, having lost £60 sterling at cards, with Robert Dundas, collector at Glasgow, he gives him his bill for the same, who indorsed it payable to William Carruthers, chirurgion in Edinburgh; and he charging, Finlayson gives in a suspension on a double pointing, That, being play-money, he is pursued by the kirk-treasurer to make it forthcoming to the poor, conform to the 14th Act 1621, so that Carruthers could claim no more than 100 merks of it, which he was ready to pay. But he craving his bill to be passed on juratory caution, or such as he could find; the Lords ordained Carruthers, the charger, to depone whether he had the assignation for an onerous cause or not; that, in the first case, the bill should be refused, unless he found sufficient caution. The Ordinary having taken the charger's oath, he deponed he had it for an adequate onerous cause; whereon he passed the bill only upon caution; but the clerk being scrupulous, the caution he offered was rejected, so the bill never came to be expedite; and Finlayson's trade calling him to London, Carruthers caused arrest him there; and in regard he found not bail for his claim, he imprisoned him and kept him till Finlayson was forced to pay the sum in the bill, to get liberty to go about his employment; and now gives in a bill to the Lords, complaining that Carruthers had, in contempt of the Lords' authority, incarcerated him during a standing suspension; for though it was not passed yet, there was still a dependance till the Lords had advised his oath, which they never did; and so could not proceed neither here nor elsewhere to execution; and therefore craved he might be fined for his contempt, and refund all his damages; which he instructed by declarations under the hands of my Lord Mayor and Aldermen, with the certificates and affidavits of the prison-keepers and others.

ANSWERED,—There was no manner of contempt, his suspension being fallen and expired more than a year before his attachment at London; for, Carruthers the charger having deponed on the onerous cause, the Ordinary sufficiently advised his oath, by refusing to pass but on caution; which not being found, the bill expired within a month after; and there was no need of bringing the oath to be advised by the whole Lords, more than where a reason is referred to a party's oath present at the bar, and he depones *negativè*: the Ordinary instantly advises that oath without sending it to the Inner-House. And daily practice shows how ridiculous this allegiance is; for, at the time of his imprisonment, there was neither sist of execution, passed bill, nor expedite suspension: so what could hinder him to proceed in execution, wherever he found his debtor?

The Lords found a hardship, but could not remeid it, seeing he had neglected to expedite his own suspension; and found no dependance, and so no contempt; and refused Finlayson's bill, and thus assoilyied Mr Carruthers.

*Vol. II. Page 576.*

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1710. *June 15.* THOMSON *against* JOHNSTON.

DAVIDSON of Ruckan being debtor to one Johnston, wright in Govan; he, discovering a parcel of bark, caused point it. Thomson, maltman in Glasgow, be-