

1738. November 4. MONRO *against* ROSS.

FOUND, That all messengers ought to be paid their fees and expense for executing letters of horning and caption, by the creditor employer, and not by any exactions from the debtor and the claimant, exacting, or taking from any person under diligence, any sum or security for the same, under the colour of fees or expense for executing, or for delaying to execute any such diligence, or of expense of going to or coming from any place towards the execution of such diligence, declared unwarrantable, illegal and oppressive, as opening a door to high and grievous exactions from ignorant, distressed, and indigent persons; and Alexander Ross, messenger in Tain, on account of repeated exactions of this kind from Mr John Monro, minister of Rogart, deprived of his office, and declared incapable thereof in all time coming, and fined in L. 10 Sterling; and the sentence, for the better publication thereof, ordained to be recorded in the books of sederunt, and an extract thereof to be transmitted to the Lyon, to be recorded in the Lyon-Court books, and published by him in the ordinary form.

THE LORDS have sometimes been in use, where messengers had committed such malversations as inferred deposition, to remit to the Lyon to depose them; but are now in use by their own sentence to declare them incapable, as was done in this case, and as they had before done in July last, in the case, Nimmo in Kilmarnock against M'Lesly and Henderson the messenger, (See APPENDIX); and wherein, in place of remitting to the Lyon to publish, they appointed their sentence to be published by the Sheriff of Edinburgh, and of the shire of Ayr, where the messenger lived, at the respective market-crosses.

*Fol. Dic. v. 1. p. 573. Kilkerran, (MESSENGERS.) No 1. p. 344.*

1744. July 20. LINDSAY, &c. *against* ROBERT DRUMMOND.

ROBERT DRUMMOND having got a commission from the Lord Lyon to be a messenger for the shire of Edinburgh, a bill of suspension was offered by the messengers of Edinburgh upon two grounds; *1mo*, The bad character of the said Robert Drummond; *2dly*, By the act 46th Parl. 11. James VI. the number of messengers to serve within the shire of Edinburgh is limited to twenty-four, whereof the Lyon and his brethren the heralds and pursuivants make seventeen; that the number is already compleated; and that there is a *jus quaesitum* to the messengers already admitted to bar the admission of a greater number. This bill of suspension being reported to the Court, it was unanimously refused as incompetent. The President reasoned, That Mr Drummond was *de facto* a messenger by the Lyon's commission, and that it was not com-

No 5.

Messengers cannot exact their fees from the debtors.

No 6.

The number of messengers in the shire of Edinburgh, is, by statute, limited to 24. The Lyon, heralds, and pursuivants, are not comprehended in that number.