

1697. *December 22.* WILLIAM BOICK *against* JAMIESON.

WILLIAM Boick, merchant in Edinburgh, receives a precept from one Jamieson, in Kennoway in Fife, upon a merchant in Kirkaldy, to deliver 1000 ells of linen cloth at a liquidate price. Boick requires, and the precept is protested for not delivery; whereupon they are summarily registrate, and horning raised thereon; whereof a bill of suspension is presented on this reason,---That the Act of Parliament 1696, allowing summary registration of inland bills and precepts, is relative to, and so must receive its extensions, limitations, and regulation by the Act 1681, appointing summary execution on foreign bills of exchange, which only takes place where the bills or precepts are for liquid sums of money, and such fungibles *quarum una alterius vice fungitur*; which cannot hold in precepts for delivery of goods; for, there, controversy may arise as to their sufficiency or defects; and laws, being strictly to be interpreted, are not to be extended *de casu in casum*.

ANSWERED,---Here no question can arise upon the quality of the goods, whether conform to paction or not; because there was none offered when required; but the precept being protested for not delivery of goods, it is equivalent in law to a bill of exchange protested for not payment; likeas here, in contemplation of the bargain, I advanced you £10 sterling of money; and the precepts contained a liquidation and conversion into a price, and therefore the summary charge of horning should be sustained.

The Ordinary refused to sustain it as a summary charge; but allowed them to insist in it as a libel, so that he should not be obliged to prove his reasons *instanter*, but should have terms to prove, as if he were in an ordinary action.

This being reclaimed against by a bill to the whole Lords, as cutting him off from the *induciæ legales* he would get, if he were pursued *via ordinaria*;

The Lords did not decide the point, How far inland bills and precepts, not for money, but goods, are summarily registrable on a protest, and the foundation of a charge of horning, as well as bills of exchange for money within six months; yet, for dispatch of trade, especially when protested for not implement, they ordained the parties to debate here *tanquam in libello*; and sustained the charge to have at least the effect of a libel, just as a null unformal charge or decret is commonly turned into a libel, *ad reseandum multiplicationem litium*, and to shun farther expense and delay to the parties. *Vol. I. Page 804.*

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1697. *December 30.* CHRISTIAN BLAIR *against* BESSIE CUMMING and JAMES JOHNSTON.

I ALSO reported Christian Blair, attending the Countess of Home, against Bessie Cumming, and James Johnston, indweller in Canongate, her husband. Christian, having some gowns and other clothes stolen from her, to the value of £200 Scots, and discovering one of these gowns was in the hands of the said Bessie, she pursues her before the Bailies of the Canongate, not only *rei vindicatione*, for restoring that gown, but likewise for the whole stolen at that time