

Then Cadboll craved the election of Tain at the next Michaelmas might be likewise stopped till the hearing should be. But the Lords refused to interpose.

This debate arose first on their choosing a Commissioner to send up to the Parliament of Britain. *Vol. II. Page 460.*

*July 31.*---Two more appeals were given in, viz. one for James Gray *against* the Duke of Hamilton and Earl of Selkirk, against the interlocutor pronounced *supra*, 22d July 1708, and the other was given in by Mr Æneas Macleod, in the cause mentioned, 30th current, betwixt him and Ross of Auchnachloich. But two exceptions were taken against it, viz. *1mo*, That he protested not only for himself and the burgh of Tain, but likewise in name of the royal burghs, from whom he showed no special mandate or commission. *2do*, That the article of the claim of right allows appeals only from sentences of the Lords; which, in propriety, signifies ultimate decisive sentences, and not interlocutors, as theirs, stopping the burghs' committee to proceed till the cause be heard in November.

But the Lords would signify no resentment against appeals, and therefore admitted it; and allowed their clerks to give out an instrument thereon; though some proposed it might only be done by the notary whom the party brought along with him. *Vol. II. Page 460.*

1708. *July 30.* WILLIAM GRAHAM *against* SIR WILLIAM SHARP.

SIR William Sharp being debtor in £400 sterling to James Foulis, factor in London, he empowers George Clerk to transact the debt; who makes a transaction with Sir William, and takes a right from him to an adjudication on the estate of Down, and gives Sir William a backbond, that, how soon he receives payment, by virtue of that adjudication, he should thereafter discharge Sir William's whole debt. William Graham, merchant in London, having purchased right to this debt from James Foulis; he charges Sir William on the first original bond; who *SUSPENDS*, on the transaction he had made with Clerk, factor for James Foulis; and craves the benefit of restriction.

*ANSWERED*,---Clerk had no power to give away his constituent's money; and the security was not in satisfaction, but only in corroboration.

The Lords sustained the backbond, and restricted the sum; and found Sir William Sharp no further liable.

Upon this interlocutor, William Graham gave in a protestation for remeid of law to the British Parliament. *Vol. II. Page 460.*

1708. *November 6.* JOHN HENDERSON of KIRKLANDHILL *against* ROBERT DEWAR.

ROBERT Dewar, vintner at Channelkirk, being imprisoned in Haddington tolbooth by John Henderson of Kirklandhill, for payment of 100 merks of yearly tack-duty, contained in a tack of some acres set to him, and of 300 merks in a bond granted by him to one Bell, and assigned to Kirlandhill; he gives

in a bill of suspension, containing a relaxation and charge to set at liberty, on thir reasons, That his tack-duty was all exhausted, and paid to the minister, either for his stipend or for Kirklandhill's share and proportion of the stent laid on for repairing his manse. And for the 300 merks due by his bond, the charger had maliciously and unnecessarily taken assignation thereto without an onerous cause, and was more than paid thereof, by pointing his household furniture and plenishing. *2do*, The imprisonment was unwarrantable, being by a messenger deposed by the Lord Lyon, who could not legally apprehend him: and he had taken instruments thereon.

ANSWERED for the charger to the *first*,—That, since these payments, they had fitted an account in March last, whereby Dewar, after allowance and deduction of all his partial payments, acknowledges he is yet resting of the tack-duty £71 : 11s. Scots. And, as to the pointing, he opposes the execution and apprehension; which does not amount to near the half of his sums. To the *second*,—He is not concerned in the messenger's deprivation, never being intimated to him; especially seeing he often deprives them for no malverse in their office, but only for not paying in their dues to him. And it is enough if he is holden and reputed a messenger to validate his acting; like Barbarius Philippus, *l. 3, D. de Offic. Prætor.* *2do*, There was a concurring messenger along with him, against whom there lay no such exception.

The Lords found they could not summarily set him out, but recommended to the Ordinary to deal with the charger to restrict his sum to what was justly due, and to accept of caution; which Dewar offered him upon his liberation; and, if he did not consent, then to discuss the reasons on the bill.

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1708. *November 9.* COLONEL JOHN BUCHAN of CAIRNBULG *against* GEORGE LEITH, his Tenant.

COLONEL Buchan having bought the barony of Cairnbulg from the Lord Fraser, in 1703, he, in 1707, pursues Leith, one of his tenants, in his own baron court, and takes out a decret against him for £344 Scots: and having thereon obtained a decret of authorization against him before the sheriff of Aberdeen, conform to the rollment of the baron court, and having charged thereon; he *SUSPENDS*, on thir reasons, That, in the baron decret, he was both judge and party, and in the sheriff's decret there was manifest iniquity in not allowing his damages and deductions to be proven; and which he now repeats by way of declarator and reduction,—That the Colonel deprived him of his barn, by pulling it down when he had his corns in it, by which, he having no other place, he was forced to remove it to the barn-yard, and thresh it out there, in the open air, exposed to wind and weather; by which he was a considerable loser. *2do*,—For a whole summer he led sea-ware to a piece of ground, to dung it, and had 14 horses constantly employed therein; and, when he came to till it, his master stopped and interrupted him, whereby he lost a good crop; by which hardships (the like whereof he alleged were not upon record to be paralleled,) he was lesed in more than £400 Scots; for liquidating whereof he had raised a declarator.