

1708. July 27. The DUKE of DOUGLAS *against* The CREDITORS of SPOT.

No 57.

Chamberlain of the crown-rents not exonerated from being liable for rests due by the vassals or tenants, by instructing diligence done for the same; the Treasury and Exchequer not being in use to take rests off the hands of the Chamberlains, Sheriffs, &c. who are bound to fit their *æques* yearly in Exchequer, and get letters of relief against debtors.

THE Duke of Douglas having a gift of L. 400 Sterling yearly, containing an allocation upon the heritable chamberlain of the Lordship of Dunbar; and having got the backbond granted to the Exchequer by Lord Alexander Hay, donatar of the escheat of ——— Douglas of Spot, who is heritable chamberlain, burdened therewith, his Grace applied to the Lords for an order to the donatar to pay him the sum of L. 7546: 7: 1d, due by Spot as chamberlain: Which the Creditors of Spot contended should not be granted; in respect, they offered to prove that a great part of the money is yet resting by the feuars and others liable in payment; and such rests were always sustained as a valid article of discharge in a chamberlain's accounts, when he instructs diligence done therefor.

*Alleged* for the Duke; The Treasury and Exchequer were never in use to take rests off the hands of the Queen's Chamberlains, Sheriffs, Stewarts, or Bailies, who were bound to fit their *æques* yearly in Exchequer, and to get letters of relief against debtors. And albeit Sheriffs, who have no fee, are in a more favourable case than chamberlains who have one; yet the former are not only bound to fit an *æque* for the time they officiate, but also for all preceding their entry from the last fitted *æque*.

*Answered* for the Creditors of Spot; The Queen's Chamberlains are not in the case of Sheriffs, who, upon giving infestment, get payment, and are secure in all events by the clause *capiendo securitatem*.

THE LORDS found, That diligence did not exoner the Chamberlains of the Crown rents, from answering and being liable for rests due by the vassals or tenants.

*Fol. Dic. v. 1. p. 242. Forbes, p. 274.*

1710. July 18.

No 58.

A factor on a sequestrated estate, who had got a trust disposition from the proprietor of the estate, was found liable to account at a rental, and not for his actual intromissions only,

WALTER GIBSON, late Provost of Glasgow, *against* MUNGO COCHRAN Merchant there.

IN the count and reckoning at the instance of Walter Gibson, against Mungo Cochran, for his intromissions with the rents of the pursuer's lands, as factor appointed by the Lords for the behoof of his creditors;

*Alleged* for the defender; Though a factor named by the Lords upon a sequestrated estate, is holden to count to the debtor's creditors, conform to a rental; and the defender's intromission began by the factory for their behoof, yet he afterward got a disposition in trust from the pursuer, by virtue whereof he transacted all the debts; and how soon these came in his person, was no longer to be con-

sidered as the creditors's factor, but as trustee to the common debtor, who having intromitted promiscuously himself, can put the defender to answer only for his actual intromissions.

*Replied* for the pursuer; Mungo Cochran being empowered by the Lords to uplift the pursuer's rents exclusive of all others, he was obliged to do exact diligence, and to count for the same. His voluntary suffering the pursuer to intromit, could not invert or alter the nature of his factory and trust, but operate only a personal defence against the intromitter, That he cannot seek twice payment; and in so far as the pursuer did not intromit, the defender stands accountable for exact diligence; because only the defender had a title to intromit, or do diligence for payment; the heritor of a sequestered estate being quite divested, and his right not to be reintegrated by the factor's tolerance.

THE LORDS found the defender liable to count at a rental, and not for his actual intromissions only.

*Fol. Dic. v. 1. p. 242. Forbes, p. 423.*

1724. *January 30.*

THOMAS GARDEN Merchant in Dundee, and JOHN DONALDSON Writer there, his Assignee, *against* JOHN PILMORE Writer in St Andrews and JOHN LINDSAY Merchant there.

ROBERT BALFOUR skipper in St Andrews was debtor to Thomas Garden in L. 40 Sterling per bill; for security of which he gave to Garden a bill of bottomry, and also a vendition of five eighth-parts of his ship.

Balfour's ship having come into the harbour of St Andrews, Garden left the bill of bottomry and vendition in Mr Pilmore's hands, to be given up to Balfour, upon his payment of the L. 40, or finding security; and Garden being to go abroad, committed the inspection of that affair to David Brisbane writer in Dundee.

Brisbane wrote two pressing letters to Pilmore, to take out an admiral precept, and arrest the ship till good security should be got for the L. 40, and Pilmore in return to these letters wrote to Brisbane, that he had got a bill drawn upon and excepted by John Lindsay merchant in St Andrews for L. 40, and that thereupon he had sent back the precept unexecuted.

Garden and his assignee brought an action against Pilmore upon his said letter, either to deliver up Lindsay's bill, or pay the L. 40. Pilmore pretended, that the bill was in John Stark writer in St Andrews his hand; and having got a diligence for recovering it, Stark at exhibiting deponed, that it was deposited by Lindsay in his hands as his doer, not to be delivered up to Garden, until he should make over to Lindsay the security he had from Balfour, both with regard to his person and the ship, for his relief of the sum in the bill.

No 58.

tho' the proprietor had a promiscuous intromission.

No 59.

A person gave a mandate to his agent to arrest a ship. He having got a bill for the debt, neglected to use the arrestment. The Lords found him liable in the debt.