

Bailies of Edinburgh, his defence was this, That with the bill he received likewise a letter of advice from Sir David, bearing that he needed not scruple to answer the said bill, in respect he would send him a parcel of good and sufficient wines, that would do more than repay him his money disbursed by accepting this bill; which was the sole motive that induced him to accept the bill. But the wines being now come home, there being nothing more rotten nor insufficient than they; and, therefore, since the only cause of his accepting that bill, was in hopes to have got good wines, which failyeing, he must be freed of the bill, at least of so much thereof as must in reason be abated of the price of the wines, by reason of their utter insufficiency. The Bailies not laying great weight upon this, Somervell advocates the cause to the Lords upon this reason, that his defence being *in ipsis apicibus juris*, and founded on the common law, *viz.* on the redhibitorian action *quanti minoris*; and that the bailies though most honest men, yet were not civilians; therefore that the question was altogether proper and competent to the Lords' cognition, and fit allenarly to be decided by them.

This being heard, it was taken to interlocutor to the Inner House; where the Lords found it was no good ground of an advocation, and therefore remitted the cause again to the baillies, *et merito*.

*Advocates' MS. No. 176, folio 99.*

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1671. June 16.

THIS day my Lord Halkerton intimated to the advocates and clerks, that the Lords would receive no reports into the Inner House, except they were brought in the very next day after the Lords' answer was craved thereupon: and this, in respect, they found these reports being brought in unduly, consumed much of their time.

*Advocates' MS. No. 177, folio 99.*

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1671. June 22. LORD BALMERINOCHE *against* ———.

A MAN grants an infeftment of annualrent, which he appoints to be uplifted out of two tenements of land, whereof he had several seasines, and of both which he was heritor. The creditor is ever in possession, use, and custom of uplifting his annualrent out of one of these tenements, and never out of the other; for though the *duo tenementa diversa* were *aliud et aliud corpus* in themselves, yet as to the *jus pignoris* constitute therein to the creditor, that was indivisible, and so it was in his option to betake himself either to the one tenement or the other. Thereafter the common owner of both the said affected tenements, sells them to sundry persons, and the right of that tenement out of which the creditor was in use to uplift his annualrent for the space of sixty years and upwards, comes in the person of the Lord Balmerinoch, who pursues the heritor of the