

against Mr Hugh Fraser, minister, this point was taken to the Lords' answer by Newton:—Where a bond of presentation of a debtor is taken under a penalty by and attour the sisting of him, but does not expressly bear that they shall be liable for the debt owing by the principal party to be presented; in case he fail, whether the paying the debt due by the principal party, in case of not presenting him, be included and implied *ex natura rei*, as the meaning and design of the parties, without expressing it.

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1681. July 6. GEORGE DRUMMOND *against* JAMES DUMBAR.

GEORGE DRUMMOND, late Bailie in Edinburgh, against James Dumbar, messenger, anent his arresting the Laird of Dundass. The Lords found, where one is imprisoned for a riot by order of the privy council, and is arrested in prison by virtue of a caption for a civil debt, if the privy council release him, he cannot be detained on pretence of the arrestment;—because it falls by consequence, the first cause of imprisonment on which it depends being relaxed.

Yea Halton, (who stood very high in this cause for the privy council's jurisdiction,) and some others went this length, that, though the first cause of imprisonment had been on a caption for debt, and the second only by the council, yet he might be liberated by the council's order. Which seems most arbitrary and unjust.

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1681. July 7. The CHIRURGEONS of EDINBURGH *against* The APOTHECARIES.

IN the mutual declarators between the Chirurgeons and Apothecaries in Edinburgh, the Lords, before advising, named three of their number to call for three physicians, Hay, Stevenson, and Balfour; and thereafter added Burnet; to take their advice and opinion anent the true limits and distinctions of chirurgery and pharmacy. And they having made a report to the prejudice of the privileges of the chirurgeons, and the Lords having advised the controverted points betwixt them, on the 19th of July, they found phlebotomy, or blood-letting, only belonged to the incorporation of the Chirurgeons of Edinburgh, within the town, upon citizens and burgesses. But if it extended *ad pomeria urbis*, to the suburbs and liberties of it; and if they should have the sole right and power to exercise it upon strangers within the town, they desire to hear that farther debated and cleared. And found others than chirurgeons might breathe a vein, and let blood, even upon burgesses within the town, in the cases either of imminent necessity, (where a chirurgeon is not so near as another, who it may be chances to be present,) or charity to the poor. As for searchcloths, found the sole application of them belonged to chirurgeons, where there was any manual operation by evisceration, incision, and exenteration; and, in other cases, that the apothecaries might apply them as well as they. And, *quoad* the summary way of chirurgeons arresting unfree-men, and offering to prove the contraventions by their oath; the Lords discharged the further using of that, (even though they gave in a

special condescendance of time, place, and persons,) till they heard that point farther reasoned in their own presence. See 14th Feb. 1682.

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See the subsequent parts of this case, at 30th June, 1687.

1681. July 8. GORDON *against* SIR ROBERT INNES.

IN the case of Gordon against Sir Robert Innes; where a bond for the price of lands bears, that it shall not be paid till the rights be perfected, and incumbrances cleared, nor bear annualrent *medio tempore* :

The Lords found the buyer was not liable for annualrent for sixteen years past, because it was all that time ere the incumbrances were purged, and security perfected.—Which was a very hard decision, considering the buyer had during all that time peaceable possession of the land by virtue of the minute, and was distressed by none; and had both the maills and duties, and yet was free of the annualrent of the price; which was *ex damno alterius lucrum captare*. But the Lords adhered to the paction: which seemed to others to be unlawful and usurious, *et pactum contra bonos mores*. *Vol. I. Page 146.*

1681. July 9. WILLIAM BECK *against* ANDREW PATERSON.

WILLIAM Beck having raised a reduction of an inhibition served by Andrew Paterson, deacon of the wrights of Edinburgh, on this reason, Because Andrew by his back-bond had obliged himself not to use any execution against William, on that sum, during William's lifetime;

My Lord Newton found an inhibition was not an execution, and so Andrew was not tied up from using it; seeing his back-bond did not oblige him to forbear any manner of diligence for securing himself: albeit it was ALLEGED, an inhibition against a merchant wrongs his trade. Yet inhibition strikes not against moveables.

Then they offered to prove, by the witnesses inserted, that all manner of diligence, even an inhibition, was intended and communed on to be discharged. This Newton refused, but found it only probable by Andrew the inhibitor's oath. *Vol. I. Page 146.*

1681. July 15. TOLQUHOUN *against* ADAM URQUHART.

IN Tolquhoun's suspension against Adam Urquhart of Meldrum, the Lords, upon Newton's report, found that Tolquhoun was wrongously imprisoned upon a caption containing teind duties from 1665; whereas, before the executing the caption, Meldrum had past from ten of these years, and restricted to 1675 and subsequent years: but it not being so restricted at the time of his im-