

disappeared and no body came to receive the wines, they supplicated the Lords, that they would give warrant to them to sell the wines, lest they should perish, and to be liable only for the best price they could get for them; they did also represent, that Spruce had a factor in Edinburgh, who being cited by a macer, did not appear.

No 64.

“THE LORDS refused the supplication, and found, that the day of the appearance of the summons not being come, and the Englisman neither being present, nor obliged to be present, they could do nothing against him, more than if he had not been cited, and so could not sequestrate nor appoint the wines to be sold; but they allowed the party to protest that they had done all diligence that the wines might not perish, whereof the Lords would take consideration in any process that should occur.

Stair, v. 1. p. 403.

1675. *January 13.*

A. against B.

APPLICATION being made to the Lords by a bill given in by a widow, desiring that she may be allowed to intromit with the crop and goods pertaining to the defunct, without hazard of vicious intromission,

No 65.

THE LORDS thought that such warrants being *voluntariæ jurisdictionis*, and the Commissaries being entrusted for securing the estate of defunct persons to the nearest of kin, and creditors, and other persons having interest; did remit the petitioner to the Commissaries of the place. Sir David Falconer younger was for the petitioner and subscribed the bill.

Fol. Dic. v. 1. p. 496. Dirleton, No 221. p. 103.

1683. *March.* LORD LIVINGSTON *against* GORPON of Troquhen.

No 66.

A Gift of forfeiture may be declared before the Court of Session, though it was contended that the Lords of Session are not competent Judges to any nullity or informality of a criminal process.

Fol. Dic. v. 1. p. 495. Harcarse. P. Falconer.

*** This case is reported by Harcarse, No 18. p. 3416, *voce* DECLARATOR, and by P. Falconer, No 41. p. 4714, *voce* FORFEITURE.