

ED,—There was no law exeeming their horses, though captions could not be executed against their persons.

REPLIED,—Public utility required this security, as well as it had done in the case of plough-graith, (but that is by a special statute, Act 98th, Parl. 1503;) and, where a soldier is owing me, I have a remedy by complaining to his Captain, who is bound to turn him out of his company, or else to detain as much of his pay as will satisfy the debt.

The Lords, on Drumcairn's report, found it of the nature of a spuilyie, and that the horse ought to be restored *cum omni causa*, and the Dragoon's prejudice refounded, by his attendance in seeking him back again.

See the like formerly reasoned and decided at Privy Council, the 10th March 1681, Major Lyell; but there it was not a common soldier's horse, but an officer's; only he belonged to the militia, and not to the standing forces.

*Vol. I. Page 318.*

1684. *December 10.* The COUNTESS OF KINCAIRDEN *against* CORNWALL of BONHARD.

THE Countess of Kincairden and Cornwall of Bonhard decided. Bonhard had been tacksman of the Earl of Kincairden's coal and salt at Culross;—but had, by letters under my Lord's hand, ground to crave retention and abatement of 5000 merks of the tack-duty. The Countess, as donatrix to her husband's liferent escheat, craves he may count for the whole, and ALLEGED,—She was not bound to stand to these abatements.

The Lords allowed the defalcations, and found she behoved to stand thereto.

*Vol. I. Page 319.*

1683 *and* 1684. LANCELOT CATHCART and ——— CARLETON *against* JANET RAMSAY and ARTHUR M'GILL of KENBACK.

1683. *March 13.*—IN Cathcart and Carleton's action against Janet Ramsay and Mr Arthur Macgill of Kenback, for the jewels;—the Lords, on Pitmedden's report, adhered to a former interlocutor; and find still, that the executors of Colonel Cunningham, the husband, have good right to pursue for the exhibition of the jewels, without prejudice to the executors of his wife to pursue for her third, and the *paraphernalia*, as accords of the law. And find, That John Ramsay ought to have called the nearest of kin to his decret of exoneration; and that, they not being called, the said decret does not exoner him. And find, that John Ramsay is liable upon the trust, notwithstanding of the allegiance that Mr Robert Byers was conjunct trustee with him; and that in respect of the bond bearing John Ramsay to be the depositor, and his not doing diligence against Byers *debito tempore*, for recovering of them. And find, That John Ramsay, as executor-creditor to Colonel Cunningham, has right to affect the jewels and writs, to the value of the debts owing to him;