

- No 14. by mistake, by false tokens, or the like; and that this was sustained already in a pursuit against her by Mr Alexander Birnie, Advocate, *supra*, and the Bailie of the Abbey Court having decerned against her, and she having suspended, the LORDS, on Forret's report, reduced the said decret, and assoilzied her, unless they would prove she was accessory.

*Fol. Dic. v. 2. p. 56. Fountainhall, v. 1. p. 272.*

1687. June.

DAVID JOHNSTON *against* RANKIN.

No 15.

IN a pursuit for the hire of a horse, it was *alleged* for the defender, That he having ridden him the length of Dunbar, in company with others, very soberly, the horse fell sick and lame, so as he was forced to leave the beast there, which he intimated to the hirer.

THE LORDS found the defender free of the hire, and of the charges of the horse at Dunbar;

*Fol. Dic. v. 2. p. 57. Harcarse, (SUMMONS.) No 930. p. 261.*

1688. February 28.

TROTTER *against* BUCHANAN.

No 16.

ONE Trotter having hired a horse from Buchanan in Cockenzie, there is a decret obtained against him for the horse, or its price; which was suspended on this reason, that having ridden to Leith with him, he was stolen out of a stable there. *Answered*, This was not sufficient, seeing he might pursue the stabler. *Replied*, The *casus fortuitus* must defend both, there being neither *dolus* nor *culpa* qualified against them—THE LORDS, on Boyne's report, found the reason of suspension relevant to assoilzie him, that the suspender did deliver the horse to the keeper of a common stable, to be kept in his stable; and that the horse was stolen out of that stable: And also sustain the charger's answer, that the suspender, either *scripto vel juramento*, promised to satisfy the charger for the horse. But it may be considered how far the edict *nauta, caupones, stabularii*, may reach at least the stabler; seeing Patrick Steel was made liable for the Master of Forbes's cloak stolen in his house, though it was not proved that his servants did it. No 2. p. 9233.

*Fol. Dic. v. 2. p. 57. Fountainhall, v. 1. p. 501.*