

and so it continues by the 35th Act 1661, and never seems to be altered till the Act 1681; which, when thoroughly considered, neither innovates nor derogates from the former laws, however that clause may be inadvertently conceived; seeing these expenses ought to affect none save such as are capable to elect or be elected; though it was contended, that gentlemen's vassals being represented in Parliament, either by their master or his delegate, (as every foot of ground is there represented by somebody, conform to the ancient feudal custom,) they ought to bear a proportion of their fees, in respect of the *dominium utile* enjoyed by them. The feuars having alleged, that, by a solemn interlocutor, in July 1687, when Sir George Lockhart was President, the sub-vassals were assoilyied from a pursuit of this nature, intended by Seaton of Tough, as one of the Commissioners of Stirlingshire against them; the Lords desired to see the grounds on which that decision proceeded, before they should determine this general important case; seeing that practick was subsequent to the Act 1681, and sundry of the then Lords of Session were members of Parliament at the making of that law, and so might be presumed to know its meaning best.

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1696. *January 2.* DAVID FRENCH *against* CATHCART of DRUMJOAN.

ARBRUCHELL reported David French, Writer in Edinburgh, against Cathcart of Drumjoan, for payment of 300 merks contained in his father's bond in 1656, granted to William Mitchell, to whom David had confirmed himself executor. ALLEGED,---This was a most suspected contrivance, seeing he offered to prove, by the pursuer's oath, he got this bond from Mr James Cathcart, now of Carbiston; which being acknowledged, then he offered to prove, that Mr Francis Cathcart, Mr James's father, was agent for the debtor; and, it is to be presumed it was lying beside him as his client's paper, being paid and retired; and that David French and Carbiston had made a bargain betwixt them to divide the spoil.

The Lords remembered that Mary Erskine, relict of Robert Kennedy, pursuing Cullaine, they had found that a bond lying beside Robert, (who was Cullaine's agent,) with a blank assignation thereto, was to be presumed to be a retired writ for Cullaine's behoof; therefore they ordained David French, *ex officio*, to depone if he got it from Carbiston, or on what terms; and he confessing, then, before answer, appointed Carbiston to be examined, if he found it amongst his father's papers, and if he has any documents or evidences to instruct to whom it belonged, or how he came by it; and allowed the defender to prove that Francis Cathcart was his father's ordinary agent. Though this appears dangerous, to take away clear bonds on presumptions, yet the date being near forty years old, and purchased in by an agent, the Lords thought the truth might be brought to light by such a trial and expiscation.

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