

But the Lords, conjoining the two together, *viz.* the obligement providing for his security, in case he paid out more than the 10,000 merks, and the order they were ranked in, found Gosfuird bound to relieve him of the whole debt and cautionry in Yeaman's bond.

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1696. *January 31.* JEAN WALLACE, Lady Hackburn, *against* TURNERS, her  
TENANTS.

RANKEILOR reported Jean Wallace, Lady Hackburn, against Turners, her tenants, whom she had charged for not residing in her land, conform to an express obligement in their tacks. Their reason of suspension was, That they were under tack of a far more considerable roun, taken by them from an adjacent heritor; and he was content to put his son in her land, and subset it.

The Lords considered the obligement was specific, and that they ought not to have the privilege of subtenants and assignees; and that the master had a prejudice by their not dwelling, both in not upholding the houses so well, and the want of the fuilyie, &c.: Therefore they decerned him to dwell there for the future; and, as to bygones, *quia loco facti impræstabilis succedit damnum et interesse*, ordained them to give in a condescence of the damage and loss through his not residing since the date of his entry and tack.

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1696. *January 31.* JOHN JOHNSTON and JAMES GORDON *against* CHARLES DIRRY.

Mr John Johnston and James Gordon, merchants in Aberdeen, against Charles Dirry, merchant in Edinburgh, for the price of a parcel of cork they had sold him.

ALLEGED,—It was arrested by the Dean of Guild of Edinburgh with sundry other goods; because, having brought our ship to the port of Leith, we had broke bulk before we had made offer to the town; contrary to one of their acts.

ANSWERED,—They had loosed the arrestment within a few days after, and had offered it to him; and he, having bought some raisins from them as well as the cork, he took away the raisins, notwithstanding of the arrestment he now pretends, but refused the cork; because he found he would gain by the first, but not by the second: Likeas, there was a symbolical delivery of the cork, by weighing it in the public weigh-house of Leith.

The Lords observing there was an appearance of a trick here, and that nothing was more destructive of commerce than *calliditas et fallacia*, they allowed the pursuers to prove, though both raisins and cork were affected by the arrestment, yet he took away the raisins after the same, and refused the cork, to make him liable in the price of both.

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