

objection that he was now bankrupt, in respect that the time that the victual was sold Steedman was holden and reputed to be a responsal man, and likewise allowed the L. 40 of incident charges, the factor deponing upon the same: As also sustained the articles of the reparation of the houses, the factor likewise deponing upon the same; and sustained and allowed him his expenses of plea in fitting of his accounts, and obtaining his decret of exoneration, at the modification of the Lord Reporter.

Fol. Dic. v. 1. p. 287. Sir P. Home, MS. v. 2. No 896.

No 10.
expenses of
process of fit-
ting accounts,
and obtaining
decret of ex-
oneration.

1703. June 19. ANDERSON against GORDON, and his CREDITORS.

WILLIAM ANDERSON being tenant to one Gordon in Kinghorn, the several creditors of the said Gordon arrest in the tenants hands; whereupon he is necessitated to suspend, and likewise raised a multiplepinding, wherein he called all the competitors; and they being ranked according to their preferable diligence by arrestment, he now gives in a bill, representing, he had been at L. 5 Sterling of expenses in securing himself against double payment; and craved he might have retention of it out of the first end of the sums decerned. It was *alleged* for the creditors, That they were seeking no more than their own, *et qui suum recipit et sibi vigilavit*, he could have no retention against them; but that debate fell only betwixt him and his master. It was *contended* for the master, That when tenants are unwilling to pay, they go and stir up any pretending to be their master's creditors to arrest in their hands, that they may have a specious ground of retention of the rent, and so the stop being by their own invitation and procurement, they ought to have no benefit thereby.—THE LORDS considered this general point of importance; for, if expenses were indefinitely given to all debtors who suspend upon arrestments frequently procured by themselves, it would make a great confusion, and has never hitherto been granted; but the case of a poor tenant seems more favourable than other ordinary debtors, and it were hard to make him lose all his expenses, when he is put under an absolute necessity of suspending, by the concurrence and competition of his master's creditors on an incumbered estate; and to take it off the creditors, were unreasonable; and *quoad* the master, it may be said, that his tenant might suspend on consignation, and then plead for his expenses; otherwise not.—THE LORDS refused the bill, reserving him action or retention against his master in the subsequent year's tack-duty.—But if he be removed out of the ground, retention will signify nothing to him; and consignation is not in every tenant's power.

Fol. Dic. v. 1. p. 287. Fountainhall v. 2. p. 184.

No 11.
The Lords
refused a te-
nant his ex-
penses in sus-
pending on
multiple-
pinding a-
gainst his
landlord's cre-
ditors, but
reserved him
action against
his landlord,
or retention
of the next
year's tack-
duty.