

1704. *February 24.* DAME JEAN LESLIE, Lady Blairhall, *against* Mr DAVID RAMSAY, Writer.

BRUCE of Blairhall being at the horn, Mr David Ramsay gets the gift of his escheat on a horning for a debt which Blairhall owed to Mr Robert Blackwood, and gives a back-bond to the Exchequer, That out of the escheat he shall, *primo loco*, pay 1600 merks of aliment constituted to the Lady Blairhall, formerly Lady Innernytie, to which jointure Blairhall, *jure mariti*, had right; and on this she pursues Mr Ramsay, either to pay or assign.

ALLEGED,—Back-bonds to the Exchequer did not make donatars personally liable; for if he do not intromit with the subject he cannot be obliged to pay; and he is already denuded, and so cannot assign her, because Mr Blackwood, by the Act of Parliament, being preferable, the gift being on his horning, he hath assigned the benefit of the gift to the said Mr Robert, with the burden of this back-bond, and particularly of her aliment.

ANSWERED,—She did not insist to make him personally liable, but only in alternative terms, either to assign her, not to the whole, but to so much of the subject as will pay her aliment, or then to pay it himself; so that he has the election. And if he has put it out of his power to assign, by denuding in favour of Blackwood, then *sibi imputet*,—he must fulfil the other member of the alternative, and pay; for, by the tenor of your back-bond, you became my trustee, and could do nothing to deteriorate my condition: nor can you turn me over on Mr Blackwood, but you may seek your relief from him; for what hinders but he may transfer the benefit of the gift to another, and so on, that I shall not know whom to pursue, and so be frustrated of payment.

Some thought he might assign her to the escheat, notwithstanding of his prior assignation to Mr Blackwood, seeing it was burdened expressly with her annuity. However, the Lords, by plurality, found Mr Ramsay bound, either to assign or pay.

*Vol. II. Page 227.*

1704. *February 29.* The DUKE of QUEENSBERRY and the MARQUIS of ANNANDALE *against* DAVID BAILLIE.

DAVID Baillie, son to Mannerhall, being convened before the Privy Council, for alleged defaming and leasing-making on the Duke of Queensberry and Marquis of Annandale, in a letter he wrote to the Duke of Hamilton, on the 22d of December last, wherein he affirmed the said Duke and Marquis had dealt with him to accuse the Duke of Hamilton and others of corresponding with St Germain, and proffered him considerable advancements if he would: And in regard the said David could give no evidences of his slanderous information; therefore the Council, on the 24th of February last, declared him infamous, appointed him to stand on the pillory, and banished him to the West India plantations. David conceiving himself injured,—for if he had concealed it, then he might have been overtaken for misprision and not revealing, and now having discovered it, he is condemned as a defamer and calumniator, which makes his case hard,—he re-

solved to apply to the Parliament for reviewing and reconsidering the Council's sentence as iniquitous. And finding, that, by the 2d Act of Parliament 1695, citations, during the recess and intervals of Parliament, are to be issued out by warrant from the Lords of Session, he had prepared a bill to be given in to the Lords, for ordering a reduction to be raised, under their signet, of the Council's sentence, for citing the Duke of Queensberry, &c. to appear before the Parliament when it shall meet; but when his lawyers came to consider the clause, they thought it imported a previous cognition and trial before the summons could be granted, by which the Lords were summarily to hear and cognosce if there was ground for issuing out the summons demanded. And in regard the session was now rising, and there was no time for taking such a previous cognition, therefore the giving in of the bill was forborne.

We have several instances *supra*, in the cases of *Mr George Campbell*, *Mr William Gordon of Balcomy*, and others, where warrants were granted by the Lords to cite creditors, in order to giving protections in Parliament; but as to reductions of the Privy Council's decreets, there have been none as yet applied for. Sentences of the Session are tabled in Parliament by protestations for remedy of law; but neither these appeals nor reductions do stop execution; they are only devolutive, and not suspensive.

*Vol. II. Page 228.*

1704. June 6. JAMES HENDERSON *against* JOHN BELCHES of TOFTS and the MAGISTRATES of EDINBURGH.

JAMES Henderson, one of the macers before the criminal court, against Mr John Belches of Tofts, advocate, and the Magistrates of Edinburgh, complaining, That when he had incarcerated the said Mr John within the tolbooth of Edinburgh, upon a solemn decret *in foro* for 3800 merks, contained in his father's bond, the said Mr John had applied to the magistrates for modifying to him an aliment, conform to the 32d Act of Parliament 1696, seeing he was ready to depone he was not able to maintain himself, unless he were at liberty to go about his employment; and James Henderson having ANSWERED, That he could have no aliment modified to him, because he offered to prove he had good and sufficient funds and effects whereupon he might subsist; and the design of the Act 1696 was only in favour of poor prisoners having nothing, and who were like to starve and become a burden to the burghs where they were imprisonet, which was not Toft's case; and in the mean time he offered him three shillings *per diem* for the bygones, and in time coming:

REPLIED,---His sufficiency to aliment himself could not abide terms of probation, but behoved to be instantly verified, either by his oath or otherwise. And this was not the formal way of tabling the cause before the Lords, by a summary complaint on a bill, but the regular way was by advocacy, if iniquity was committed: which could not be pretended; for the bailies had most justly ordained him to consign a disposition of his whole estate, personal and real, and to give his oath thereon; and which he had so done: and, being *juratum*, there can be no more inquiry; and they also modified twelve shillings Scots *per diem* till his liberation.