

wronged by it, and in not applying, it was a tacit contempt. Like as it was evident that he had retarded the compt and reckoning, whereby Park sought to prove James's rights were all satisfied and paid; upon all which singularities the Lords proceeded in manner foresaid, and in other cases it would be no rule to countenance protections. Within a day or two James Johnston having paid his fine, and given in a bill to the Lords, he was thereupon liberated, and in June 1679, reopened again as a writer to the signet. The Lords are become very cautious and wary in granting their protections, as a wresting of the sense of the act of Parliament, unless there be a very manifest necessary cause for their appearance; as that something is referred to the rebel's oath, or the like, as they did in Mr Alexander Auchencmoutie's cause in June 1679 against John Hamilton, and frequently they refuse bills craving such supersederes.

*Fountainhall, v. 1. p. 48.*

1704. February 16. CHALMERS against BROWN.

ANNA CHALMERS pursues Alexander Brown, servant to the Duke of Queensberry, before the Commissaries of Edinburgh, for adherence, as being his lawful wife, owned by cohabitation and otherwise; and he having a counter process, to have her discharged from asserting herself to be his wife; and she finding a material witness lately come from London, called Marjory Forrester, who can prove sundry matrimonial acts, but being under caption, so that she dare not appear, therefore craved the Lords may give her a protection for a few days, to come in and depone before the Commissaries. Some thought the Commissaries, being a Sovereign Court *in prima instantia quoad* adherence and divorces, they might grant protection to witnesses cited to appear before themselves; others thought it was more proper to apply to the Privy Council for a protection; but the LORDS refused the desire of the bill, as not proper for them to interpose in the Commissaries jurisdiction, except it came in, either by advocacy or suspension. But there seemed to be an easy remedy here, seeing the witness might go to the sanctuary of the Abbey, and there the Commissaries might take her oath, when she was out of all hazard of captions.

*Fountainhall, v. 2. p. 224.*

1773. March 11.

JOHNSTON and SMITH late Merchants in Edinburgh, and WALTER COSSER, Trustee for their Creditors, Petitioners for a protection to the former, against ALEXANDER CHISHOLM, and Others.

UPON an application for a personal protection to the bankrupts, on the footing of the statute, 12th Geo. 3. c. 71. after the effects were vested in a trustee, and

No 8.

No 9.

No 10.  
The Court is  
*functus* as to  
the power of