

Then the *second* question was, What should be the quota? and it appearing his estate was but small, not above 600 merks by year of free rent, incumbered with debts, and that he behoved to keep the children, they modified 250 merks yearly to her; though many of the Lords were only for 200. Some inquired what her matrimonial liferent provision was? But that not being present to show, they modified *ut supra*.  
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1708. *February 21.* WILLIAM MEL *against* CHARTERS' HEIRS.

WILLIAM Mel of Roan, merchant, and French refugee, apprehending he got injustice done him, in his process against Bailie Charles Charters' heirs, by preferring the other creditors to him, he protested for remeid of law, and appealed to the British Parliament. And one Thomas Taylor, notary, whom he brought alongst with him, refusing to give him forth his instrument thereon, he complains to the Lords, craving they may order him so to do, under certification, that he shall be deprived if he disobey; which desire the Lords granted.

I think if his instrument had been required from the clerk of Session, in whose hands he likewise took it, in justice he could not have refused him an extract thereof, though we do not yet know what will be the import of these protests.

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1708. *February 24.* SIR ALEXANDER KENNEDY *against* SIR ALEXANDER CUMMING.

[See the numerous Reports of this Case pointed out in the Index to the Decisions.]

THE Lords having ordained Sir Alexander Cumming's decret of reduction of Sir Alexander Kennedy's right to the conservator's office to be extracted, Sir Andrew thereon appealed to the British Parliament. John Vere Kennedy, his son, as conjunct with his father, claiming his right, and Sir Alexander Cumming alleging he was never owned nor acknowledged as such, neither by the royal burghs nor the Estates of Zealand,—the Lords reserved his right and possession as accords.  
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1708. *February 24.* JAMES TRONS *against* The LAIRD of POURIE.

TRONS having been his tenant, and removing from his ground to the Laird of Guthrie's lands, and being in arrear of his rent, he takes a decret against him, and poinds first his corns, and then, on another day, his horse and cattle. Trons gives in a complaint to the Lords, That both the poindings were *spreto mandato*, being after a sist of execution obtained by him on a bill of suspension.

ALLEGED,—*Non relevat*, seeing the sist was not intimated to me till long after both the poindings, the sist being on the 6th January last, and the first poinding on the 7th, and the second on the 12th of the same month, and no intima-

tion of the sist till the 23d ; till which was done I was *in bona fide* to poind for payment of a just debt owing me by a bankrupt tenant seeking to cheat me.

ANSWERED,—The sist was intimated in the usual form in all such cases, at the reading of the minute-book, and by Pourie's advocate and agent taking out a double of the bill, and making answer to it, who were obliged to acquaint him of the sist. Likeas, he knew, before ever he poinded, that Trons was gone to Edinburgh to seek a suspension, and yet he proceeded, and broke open doors without special letters to that effect, and poinded plough goods in labouring time ; which both the Roman law and ours declare a spuilie.

REPLIED,—As to the first poinding, it being the day immediately after the sist, it was, *per rerum naturam*, impossible it could come to his knowledge. And *quoad* the second, though there intervened five days, yet he is ready to depone nobody acquainted him therewith ; and it was very hard to make him liable for invincible ignorance ; neither is there any law obliging his doers at Edinburgh to send and acquaint him upon the first in-giving of a bill of suspension. And, as to the poinding of labouring goods, the Act of Parliament 1503 has a plain exception, unless there be as many other goods on the ground as will pay the debt.

DUPLIED,—They did not plead his poindings so high as to import a positive contempt of the Lords' authority, seeing he might be ignorant of the stop, but only to infer restitution of the poinded goods, seeing he knew he was negotiating for a suspension, and ought not to have anticipated *lite pendente* ; during which time *nihil est innovandum* : and here, *scire et scire debere in jure æquiparantur* ; and, he trusting to his agents, must answer for their care and diligence : *qui per alium quid facit per se facere videtur*.

The Lords thought, if the tenant would find caution for the rent, they might order the whole goods to be restored ; but, he not being able, they made a great distinction between the first and second poinding : for, *quoad* the first, he could know nothing of the sist, being the very next day ; but the second was at that distance of time that he might have been very well advertised ; and his doers having neglected it, they sustained the sist to infer restitution of the goods taken away by the second poinding, seeing, at that time, he either did or might have known of the sist. And whereas it was urged he might have sent the sist immediately away to intimate, the Lords considered the poor man was in no safety here at Edinburgh ; for, not having the sist to show, a messenger might have clapt him up in prison ; and he had no present remedy till his bill was returned again to stop it.

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1708. *February 25.* LORD ROSS *against* PATRICK HOUSTON.

LORD ROSS being a sixteenth partner of a ship, he and the other partners put in Patrick Houston, as supercargo, and loaded it with coals and other goods, and advanced a stock purse of L.104 sterling, and sent it to Lisbon : and from that he got a freight to Amsterdam, and from it to London, where he sold the ship for L.701 steriing. Patrick not having counted to my Lord Ross, for his part of the profits, he pursued him before the High Court of Admiralty, for L.140 sterling, as his proportion and share : and the process having been taken up to see by William Leggat, Patrick's procurator ; and he failing to find cau-