

aliment, or a soldier's pay, nor in the case of Sir Robert Murray, Justice-clerk, his pension, which was found not arrestable ; therefore the clerk should be liable.

He ALLEGED, That what he did was by order and warrant of my Lord Mersington, then Ordinary, who had the advice of the President, and four or five of the Lords, it being in vacance, rather than to suffer Park to be affronted in the mean time, to loose the arrestment. This defence being acknowledged by the Lords present, they thought it unworthy to allow the clerk to suffer for what he did by their authority and warrant, though only verbal ; and, therefore, the Lords present at the communing offered to pay the sum out of their own pockets. The rest of the Lords, from a generous emulation, refused to be ex-  
 emed, and so it was laid upon the whole, upon an assignation to the debt against Park's heirs ; though there be no hopes or expectation of relief. The sum is small ; however, it is an instance of that rule of law, *si iudex litem suam fecerit, damnum partis læsæ resarcire tenetur*, whereof there are but few examples. Vol. I. Page 634.

1694. July 6 and 19. SIR DAVID CARNEGIE of PITTARROW, *against* SIR ALEXANDER FALCONER of GLENFARQUHAR.

July 6.—SIR David Carnegie of Pittarrow against Sir Alexander Falconer of Glenfarquhar, upon a decret of miln multures, and astriction of Sir Alexander's lands of Scotston and Powburn, to Pittarrow's miln of Conveth, which was feued out to the Wishearts of Pittarrow, by the abbots of Aberbrothock in 1225. Sir Alexander craved to be reponed ; in regard the point of right was not *deductum in iudicium*, nor the declarator of astriction insisted in on the one side, nor the declarator of exemption and immunity on the other. Sir David opposed his decreets ; and though, at first, it was only an action for abstracted multures, yet the point of right came in to be determined in the debate. The Lords found it proper, ere they would decide, to name two of their number, with the reporter, to essay an understanding between the parties. Vol. I. Page 628.

July 19.—The case of Pittarrow against Glenfarquhar, mentioned 6th current, was again reported : and, after perusal of the decreets, the Lords, by the plurality of five against four, found the point of right of the constitution of the thirlage was not *deductum in iudicium* ; and, therefore, opened the decret, and allowed Glenfarquhar's lawyers to be heard on the material justice of the cause, and whether his lands were thirled or not, or if he had prescribed an exemption and immunity.

In this process, it had been debated, whether the master's farm was thirled with the *omnia grana crescentia*, seeing it excepted nothing but seed and teind. —See, for this, Durie, 11th July 1621, *Keith*. Vol. I. Page 635.

1694. July 19. The TOWN of EDINBURGH *against* SIR WILLIAM BINNY.

THE Town of Edinburgh against Sir William Binny, about the property of a piece of waste ground lying at the Timber-hoof at Leith. He founded on his

charter, bounding him to the sea-flood. They contended, that, if they had not dyked it out, the sea flowed up to the ground he claimed ; seeing, *littus maris est quatenus maximus fluctus hibernus excurrit*.

The Lords appointed a visitation of the ground, and named some of their number for that effect. *Vol. I. Page 635.*

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1694. July 20. MR WILLIAM DALGARDNO *against* ROBERT KEITH of LENTUSH.

THE Lords found, seeing it was not a special legacy, but out of the whole moveables, and you having transacted and given a bond for a sum, and got abatement, it is no reason to liberate you, that you offer to prove now, that you had loss by the executry ; seeing it was a bargain in gross, and *per aversionem*, and whereof you took the hazard. And as to the £800 bond, the Lords found it an intrinsic quality, that he should get a discharge of a prior obligation ; therefore, though the Lords decerned, yet they superseded execution till the discharge were delivered *simul et semel*. Some were for superseding extract ; but the other carried it. *Vol. I. Page 635.*

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1694. July 20. MR WILLIAM WOOD, Minister, *against* THOMSON of DININNO.

MR William Wood, minister, against Thomson of Dininno, for the teinds : and the tenant having been holden as confessed on the rental in his former master's time, the Lords did now repon him to his oath against it. And, as for the crop 1693, the Lords would not decern for that year's stipend, because he was deposed by the presbytery in April that year ; and, though the sentence was only in absence, and for contumacy, and he had appealed, and it was not yet discussed, (though he had not applied to bring it into the last Assembly, and so must be presumed to have deserted it,) and that these appeals did not stop execution, yet the Lords were unwilling to meddle with the ecclesiastic sentence ; and, therefore, suspended the letters, not simply, but aye and until he should get himself reponed against that sentence of deprivation. *Vol. I. Page 635.*

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1694. July 20. The FLESHERS of AYR *against* The MAGISTRATES thereof.

THE Fleshers of Ayr against the Magistrates thereof, for suspending a fine imposed upon them for choosing a deacon of their trade, contrary to an act of their town-council, cassing and annulling that incorporation from having a deaconry ; (which many think should be done through all the kingdom, not only as to the fleshers, but as to the baxters, and other trades that furnish vivers.)

ANSWERED by the Town, That the Act of Parliament 1555 discharges deacons.

The Lords did not regard this ; seeing the universal practice of the nation