

not known, it is sufficient (when they are condescended on by the defenders,) that the pursuer call them *cum processu*. And find, that the pursuer must instruct the factory, (whereby the granters of the precept of *clare constat*, whereupon the pursuer's title is founded, are appointed trustees for the rest of the creditors;) and that *cum processu*. *Vol. I. Page 128.*

1681.

ADAM CUNNINGHAM, Macer, *against* His CREDITORS.

*January 14.*—ON a petition given in by Adam Cunningham, macer; the Lords loosed arrestments laid on against him, by virtue of registrate bonds and decreets, because they were standing suspended, though, *regulariter* and without a suspension, such arrestments are not loosable upon caution; but superseded to determine whether his casual salary of his share of the half crowns due to him for decreets, &c. as one of the macers, was of the nature of an aliment, or might be subject to arrestments; seeing, by the Act of Sederunt, 27th February 1662, the Lords' salaries are declared not arrestable, and their privileges as *corpus aggregatum* communicatively are derived to all the members, and to their servants who attend them, though only the Lords be expressed in the Act; and Bronchorstius, *ad l. 68, D. de R. I.* says, privileges granted to a College and University *extenduntur etiam ad eorum nuntios et bedellos*. See this decided 9th February 1681. *Vol. I. Page 126.*

*February 9.*—The case between Adam Cunningham and his creditors, arresters, (14th January 1681,) being reported, the Lords found the macers' dues arrestable, and allow and appoint the keeper of the minute-book (who collects their half crowns for acts and decreets,) to count with the macers three times a-year, *viz.* the 1st of January, the 1st of March, and the 1st of August; and that the said keeper shall not be obliged to depone what is in his hands betwixt terms; but the arrester, according to his diligence, shall be preferred for the current term. *Vol. I. Page 129.*

1681. *February 10.* DOCTOR FRASER *against* BURNET of LEYES.

THE Lords, upon the Register's report, find that Leyes, the defender, is obliged to exhibit all discharges granted by the legatars which the defender has, or had since the citation, to the effect it may appear these sums were satisfied, or secured, conform to the destination of Doctor Reid's testament: And admit the libel of declarator to the pursuer's probation as to the bond of £200 sterling, that it is for the same cause that the prior bond of £300 sterling was granted; and, in order thereto, appoint the defender to depone if he has the bond of £300 sterling, or had the same since the citation, or has at any time fraudulently put it away. And, in case he deny the having, and the rest, grant commission to Mr Andrew Forrester at London, to take the oath of ——— Barkhame, in whose hands the said bond is alleged to be, anent his having of the same; and he acknowledging it, that Mr Forrester take inspection of the bond, and return, with the report of the oath, a just copy under his hand of the bond, and

of the receipt of £100 sterling, alleged by Sir Alexander Fraser to be upon the back of it. Vol. I. Page 129.

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1681. *February 11.* JAMES ALEXANDER of KINGLASSIE *against* ———.

CASTLEHILL found the messenger's execution on the summons null; because, though it bore "my stamp is affixed," yet there was no stamp appearing there though recently done; and he affirmed the Lords had done the like oftentimes. I think the want of the stamp a nullity in executions of diligence, such as hornings, inhibitions, denunciations of apprisings, &c. but in citations on summons it is *juris strictissimi* to make it a nullity. However, Mr James took up his execution, and offered to make the messenger affix his stamp against the next day, and to abide at it.

Yet in Cardross's case against Sir John Maitland, (22d January 1681,) the Lords refused to allow the messenger to amend it, not being so *ab initio*. See Culross's Pract. in 1579, *Sinclair*. Vol. I. Page 129.

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1681. *February 15.* KATHARINE MITCHELL *against* The CHILDREN of THOMAS LITTLEJOHN.

See the prior parts of this case *supra*, page

The Lords having considered the bill given in by the children of Thomas Littlejohn, and that certification being made in the Outer-house none objected why the desire of it should not be granted; therefore they ordain any party concerned, to give in a list to-morrow, to the Lords, of such persons as they would have to be curators to the minors, out of which the Lords declare they will authorise one to be curator *ad hoc particulare negotium*, viz. to uplift 2500 merks from the debtors, and give a discharge thereof; which sum they are to give to Katharine Mitchell, their father's relict, for her liferent right of 600 merks *per annum*, which was no prejudice to the minors, there being almost as much of bygonies then owing her; but they were not bound to give her money, but only to assign to a third of the moveable estate. *Vide* 10th July 1678.

This is also done where minors have lands to set, and none (for fear of gestion as tutors,) dare meddle for them, and subscribe the tacks with the tenant; the Lords will authorise one for that effect, and it will bind nothing on him; which is also great advantage to minors wanting tutors or curators. *Vide* 17th January 1683, *E. of Leven*. Vol. I. Page 130.

For the numerous other reports of this case, see the Index to the Decisions.

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1676 and 1681. WILLIAM WOOD and WILLIAM SHANKS *against* ALEXANDER MURDOCH.

1676. *December 12.*—ALEXANDER Murdoch having bought a tenement in