

1694. July 6. THOMAS ALEXANDER of NEWTON *against* WILLIAM HAMILTON of ORBISTON.

THOMAS Alexander of Newton, against William Hamilton of Orbiston, for repetition of £1000 he had extorted, in 1685, by casting him and his aged father in prison, on pretence of reset, harbour, and converse with rebels; and, to pass from the pursuit, took this sum from him, giving him a discharge of the money, bearing, that he had given it to another, and that he should refund it if ever he were convened and troubled before a circuit court for these crimes. This was concussion; and to paction for and receive a bribe to pass from his accusation, *contra S. C. Turpilianum*. The question was, If it fell under the Act of Parliament; being neither a fine nor forfeiture, nor composition for the same, but a gratuity to prevent either. The Lords found it fell under that clause of the act 1690 restoring plundered goods;—that money was comprehended under the general name of goods;—and that it was a clear spuilie, there being no sentence: so that he was liable both upon the act and on the common law.

But the next doubt was, Whether, as it was now found relevant, if it was also sufficiently proven by Orbiston's discharge produced. Some alleged, that unless he was in prison at the time it was not sufficient. But the Lords thought, seeing the discharge bore he had been in prison, this was *metus cadens in constantem virum*; and that he feared the same power could throw him in prison again: therefore they found it sufficiently proven, and decerned him to restore the said sum. It was queried if it should be *cum omni causa*, and the annual-rents from the date; but this was not insisted for. *Vol. I. Page 628.*

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1694. July 10. THE MAGISTRATES of EDINBURGH *against* JAMES CATHCART of CARBISTON.

THE Magistrates of Edinburgh, against James Cathcart of Carbiston, for demolishing a fore-stair brought out too far upon the High Street. ANSWERED,—He did it on the visitation of the Dean of Guild, and a jedge and warrant. REPLIED,—That act was never extracted, and was afterwards recalled; and no visitation can be till first the act be *in scriptis* under the clerk's hand; for verbal warrants are not sufficient.

The Lords thought the first act could not be made up *per membra curiæ*; and therefore found it unwarrantably built; but recommended to the reporter to try how it might be rectified to both parties' satisfaction, without taking it down, if possible. *Vol. I. Page 628.*

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1694. July 10. MR ANDREW HOWAT *against* MARGARET BLAIR and HOWAT her Son.

MR Andrew Howat, against Margaret Blair and Howat her son, for payment