

ALLEGED,—He must have retention of fourpence *per diem* out of his pay of tenpence, on the account of clothing-money, conform to the custom of the army.

ANSWERED,—He was content to bear his share of the poundage, or the invalid's money, but for clothing there could be no retention, because he received no pay from his captain during all that time ; and, *esto* there were a practice among the captains, it was *corruptela* rather than *consuetudo* ; neither was there any instruction or article allowing the same.

REPLIED,—This retention was used in Flanders, and all other places ; and his Majesty knew of it, and allotted it as one of the perquisites of the officers ; and it could not be taken from them.

Some thought this question more competent before the Treasury or a court-martial than the Session. Others were for trying the custom ; but the generality of the Lords thought it an act of oppression to detain any part of the poor soldiers' pay on account of clothing, which was never given them ; and therefore repelled the Captain's allegiance. Which interlocutor was much disrelished by the officers of the army.

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1700. July 31. ROBERT BRUCE *against* BRUCE of EARLSHALL'S FACTOR.

MR Robert Bruce, brother to Earlshall, gave in a petition, representing, That his brother having become unfit for business, and himself having been several years abroad, as chaplain to one of the King's men of war, the affairs of that estate had come to be neglected, and run in confusion ; therefore craved to remove the present factor, and offered sufficient caution to the creditors if he were authorized to be factor.

The Lords did not think it safe, for the interest of the creditors, to put the apparent heir's brother in possession of a burdened estate, though, by mismanagement, the debt had considerably grown ; and therefore refused the desire of his bill :

But the Earl of Southesk, (who is a considerable creditor,) and his tutors, craving one M'Lauchlan to be made factor, and who offered to live in the house, which would be very beneficial to all the creditors, seeing he would prevent any farther cutting of the planting, which the laird had hitherto done : And it being ANSWERED, That M'Lauchlan was Southesk's chamberlain ; and the placing of him were to put my Lord in possession, to the prejudice of all the rest of the creditors ; and to give him the house to dwell in, was to dispossess the laird summarily without a warning, who expected a considerable reversion of his estate, after payment of the creditors :

The Lords refused to change the present factor, or to dispossess the heir from the mansion-house, now in the end of a session ; but ordained John Graham, who is still the factor, to see that no more of the policy or planting be spoiled ; but prejudice to them to apply to the Sheriff of Fife for the bygone damages.

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