

into a libel, or allow a farther probation to support and adminiculate the decret?—And it carried for the last, the probation already produced having been very expensive, and was not to be wholly laid aside, but to stand as probative, *pro tanto*.

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1704. *February 17.* The LAIRD of GRANT *against* The LORDS of the TREASURY.

By the 12th and 25th Acts of Parliament 1698, a poll is imposed; and because the honour and justice of the nation was concerned to pay the arrears due to the officers who had raised regiments at the Revolution, and clothed them on their own expenses, therefore the Parliament specially destinate and allocates the poll money for payment of these *primo loco*. The poll having been roused, and set to William Cochran of Fergusly for £20,000 sterling and some more, and the Lords of the Treasury having uplifted and disposed on the said tack-duty, Grant, who had clothed one of these regiments at his own charges, pursues the Lords of the Treasury for payment to him of £1855 sterling, resting to him on that account, as they who farmed the said poll, and received the tack-duty; which was the fund destinate by the Parliament for his payment.

ALLEGED,—The Lords of Session were not judges competent to this pursuit, but only the Lords of Treasury and Exchequer, who cognosced all questions anent the revenue and patrimony of the crown, by the 18th Act of Parliament 1633; and they could only make their accounts before auditors named by her Majesty, or the present commission of Parliament, for examining the arrears and public accounts; and all who have pensions might as well pursue the Lords of the Treasury for payment, as Grant may do; and this were to bring the whole administration of the Treasury to the Lords of Session their examination and control, and would create a great confusion and interfering of jurisdictions: and though the poll was destinate to special uses, yet its management was left to the Lords of Treasury.

ANSWERED,—Grant is not craving them to give in their accounts before the Lords of Session; but this being a civil right conferred on him by the Acts of Parliament, and they being debtors by intromitting with his money, there can be none more competent for this than the Lords: and when Hugh Wallace of Ingliston, as cash-keeper, was pursued, and proponed the like declinature, That he was only accountable to the Lords of Treasury, the same was repelled, and he forced to answer. And it seems unequal to send him to the Exchequer, where the Lords of Treasury, who are his parties, have the greatest stroke, and who have a negative by withdrawing; and the commission of Parliament have no power to determine, but only to report.

The Lords, generally, thought they were competent, this not being the Queen's cause, but that of private persons: yet seeing Grant had not libelled their misapplying the funds, or malversing in the trust reposed in them by the Parliament, though he offered to prove it by way of reply; therefore the Lords waved the cognizance of the affair at this time, and remitted the cause to the Parliament.

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