

fore him, and require their parole of honour to keep the peace; and, in case of refusal, to put them under caution of lawburrows, in the terms of law.

The Lords have been in use not only to censure irreverent carriage to the bench, but even injuries done to advocates. I remember *Sir James Keith of Cadham* was fined and imprisoned for threatening and abusing *Sir David Falconer of Newton*, his contrary party's advocate. Then insolent deportment in the Lords' presence deserves a deeper censure and resentment.

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1707. July 10. SIR WILLIAM MENZIES *against* MARION RICCART, Spouse to James Clark of Wrights-houses.

Sir William Menzies of Gladstanes being creditor to James Clark of Wrights-houses, and having adjudged, and a process of sale having been raised, he gives in a bill, craving the lands might be sequestrated in a factor's hands during the dependance of the ranking of the creditors. Compearance is made [for] Marion Riccart, spouse to the said James Clark, who alleges, That no sequestration could be granted of her locality, being only the house and yards, and some adjacent tenements and acres; because, when her husband fell into difficulties, she applied to the Privy-Council, showing, that she was provided in a considerable jointure long prior to the creditors' rights, and he having retired out of the country, she and her children could not starve; and therefore craved a small modification of an aliment. Which the Privy-Council, in 1688, accordingly gave her out of the foresaid fund, and which she has peaceably possessed since, and so has more than the benefit of a possessory judgment; and as the Council are in use to grant small aliments to wives in such hard circumstances, so the Lords of Session use not to take away decreets of the Privy-Council.

ANSWERED,—Whatever she might plead if her husband were dead, she can never found upon her liferent-infertment while he is yet alive; and the Council's decret is *parte inaudita*, none of the creditors being heard to object against the same, and given in favours of a Papist, who then got whatever they demanded. And though the Session does not meddle with the Privy-Council's decreets, yet where it comes to be questioned, in a competition of creditors, it becomes a civil right, and necessarily falls under their cognizance. And a precarious aliment can never give the benefit of a possessory judgment, though clad with never so long possession: and there was neither law nor justice in giving her the aliment, her husband being divested, long before that time, of the estate, by adjudications led against him; and she has had benefit enough to have enjoyed it these nineteen years unquarrelled. And he repeats his reduction on that head, That her husband was bankrupt before the aliment was settled on her, and was denuded by his adjudication, and those of others, and so can never compete with him.

REPLIED,—That whatever his reduction might operate, if they were proceeding in the ranking, yet here the question being only anent the sequestration, and if it should extend to the lands and houses she is in possession of, it can never be received summarily to dispossess her *hoc ordine*, but must be reserved to the competition of the creditors, to be discussed there.

The Lords refused to take in Sir William Menzies his reduction *incidenter*

here in the sequestration, but left him to prosecute it in the ranking ; though there is nothing more usual than to receive such reductions, and allow them to repeat their reasons summarily. But the Lords inclined to let her possess, though it was but lamely founded, till it were formally quarrelled and taken away in the ranking, where Sir William would certainly prevail.

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1707. July 16. ALEXANDER DRUMMOND *against* THOMAS CALDERWOOD.

Mr Alexander Drummond, writer to the signet, as principal, and James Cockburn, writer in Edinburgh, as cautioner, grant bond to Janet Calderwood for 1000 merks, not to be payable but at the sight and by the advice of Thomas Calderwood in Dalkeith and Alexander Reid, goldsmith in Edinburgh. The said Janet being married to John Little, he pursues William Cockburn, the heir of the cautioner, before the Commissaries of Edinburgh, for payment ; and though he instructed that a considerable part of the sum was paid to the said Thomas Calderwood, and his receipt produced, yet the Commissaries repelled the defence ; because neither the said Janet herself consented, nor yet Alexander Reid, the other party, by whose advice it was to be uplifted. Whereupon William Cockburn was decerned, and accordingly made payment, and pursued Drummond, the principal debtor, to relieve him ; who repeated the foresaid defence, That he had made partial payments to Thomas Calderwood. And he likewise compearing in the process, did further allege, That the payments made by him could never be repelled, on pretence of the want of the said Janet's or Alexander Reid's consent ; but ought to be sustained, because he offered to prove, that what he uplifted was *in rem versum* of the minor, and applied for her necessary maintenance, education, clothes, apprentice fees, &c. Which the Commissaries still repelling, Mr Drummond was forced to pay it in to William Cockburn, the cautioner's heir. Whereupon Mr Drummond, as his last refuge in law, intents a process of repetition against the said Thomas Calderwood, for repaying the sums contained in his receipts, which the Commissaries had refused to allow, as being *indebite solutum*.

ANSWERED for Mr Calderwood,—That the Commissaries had committed gross iniquity in repelling his unanswerable defence, That whatever he uplifted was *in rem versum* to the minors ; and you Drummond nor Cockburn ought not to have acquiesced therein, but you should have suspended on that reason ; and, having neglected the remedy law gave you, can never recur against me ; but *tibi imputes*.

REPLIED,—This comes too late, and is neither competent nor relevant now : not competent, after two decreets, in both which you are compearing yourself, and proponing all you can say ; and not relevant, because twice repelled. And whether the Commissaries' sentence be *æqua* or *iniqua* is not the question, seeing you were not only certiorated of the whole procedure, but ought to have suspended for me ; which you having omitted, you must be liable in repetition of what is found to have been unwarrantably uplifted by you.

The Lords found an evident loss and hardship on both sides ; and that they were both *in damno vitando* ; the only question being, Which of them should