

1708. July 27. The DUKE of DOUGLAS *against* The CREDITORS of SPOT.

No 57.

Chamberlain of the crown-rents not exonerated from being liable for rests due by the vassals or tenants, by instructing diligence done for the same; the Treasury and Exchequer not being in use to take rests off the hands of the Chamberlains, Sheriffs, &c. who are bound to fit their *æques* yearly in Exchequer, and get letters of relief against debtors.

THE Duke of Douglas having a gift of L. 400 Sterling yearly, containing an allocation upon the heritable chamberlain of the Lordship of Dunbar; and having got the backbond granted to the Exchequer by Lord Alexander Hay, donatar of the escheat of ——— Douglas of Spot, who is heritable chamberlain, burdened therewith, his Grace applied to the Lords for an order to the donatar to pay him the sum of L. 7546: 7: 1d, due by Spot as chamberlain: Which the Creditors of Spot contended should not be granted; in respect, they offered to prove that a great part of the money is yet resting by the feuars and others liable in payment; and such rests were always sustained as a valid article of discharge in a chamberlain's accounts, when he instructs diligence done therefor.

*Alleged* for the Duke; The Treasury and Exchequer were never in use to take rests off the hands of the Queen's Chamberlains, Sheriffs, Stewarts, or Bailies, who were bound to fit their *æques* yearly in Exchequer, and to get letters of relief against debtors. And albeit Sheriffs, who have no fee, are in a more favourable case than chamberlains who have one; yet the former are not only bound to fit an *æque* for the time they officiate, but also for all preceding their entry from the last fitted *æque*.

*Answered* for the Creditors of Spot; The Queen's Chamberlains are not in the case of Sheriffs, who, upon giving infestment, get payment, and are secure in all events by the clause *capiendo securitatem*.

THE LORDS found, That diligence did not exoner the Chamberlains of the Crown rents, from answering and being liable for rests due by the vassals or tenants.

*Fol. Dic. v. 1. p. 242. Forbes, p. 274.*

1710. July 18.

No 58.

A factor on a sequestrated estate, who had got a trust disposition from the proprietor of the estate, was found liable to account at a rental, and not for his actual intromissions only,

WALTER GIBSON, late Provost of Glasgow, *against* MUNGO COCHRAN Merchant there.

IN the count and reckoning at the instance of Walter Gibson, against Mungo Cochran, for his intromissions with the rents of the pursuer's lands, as factor appointed by the Lords for the behoof of his creditors;

*Alleged* for the defender; Though a factor named by the Lords upon a sequestrated estate, is holden to count to the debtor's creditors, conform to a rental; and the defender's intromission began by the factory for their behoof, yet he afterward got a disposition in trust from the pursuer, by virtue whereof he transacted all the debts; and how soon these came in his person, was no longer to be con-