

appointed a committee to examine the book, and after several meetings they made a report, and the meeting approved the book with one amendment; and in it the valuation of Meikle Govan was divided in terms of the contract. The complainer objected that this division was made without any proper authority and without proof; 2dly, That the deceased Sir John Maxwell who had purchased these superiorities in his son's name gave the disponer an obligatory letter that he should redispone them, and offered to prove it by the respondent's oath, who deponed that the first time he heard of such a letter was after he had lodged his claim to be enrolled; that thereon he sent a message to enquire at the disponer whether it was so, who thereupon wrote to the respondent and sent him inclosed his father's letter to be disposed of as he should think fit: Therefore the complainer objected that his right, being no proper wadset, but under an obligation to redispone, gave no title while that letter remained, and if he had no title to be enrolled when he entered his claim, he should not have been enrolled. We unanimously repelled the first objection, because the contract 1726 appeared to have been entered into without any view to elections, and was sufficiently authorized by the general meeting in 1748. The Court also repelled the second objection, in which Drummore, Haining, and I did not vote; and the President thought that though the letter had been yet standing or unretired it would not have been a good objection, and that the act 12 *Annæ* meant not to alter our law as to qualifications of electors, but to give a new mean of proof, and that a temporary right of property was a good vote though no wadset, and he was told that the letter was only to redispone after ten years.—(N. B. He was told this when at the Bar, being consulted on the complaint, but nothing of it appeared before us.)

MESSENGER.

No. 1. 1738, Nov. 3. ALEXANDER ROSS *against* THE SHERIFF-CLERK OF ROSS.

IN the reduction *Monro against Ross, messenger*, of a bill,—the Lords last Session assoilzied from the reduction, notwithstanding there appeared great imposition on *Monro the Minister* by the messenger, because it appeared by the proof that this bill was the effect of a transaction by the interposition of arbiters, and an abatement given; but because of the evidence of malversations by *Ross*, in his office of messenger, they ordered him to sist himself at their Bar this day, which he did; and being examined and heard by himself and his procurators, the Lords found that all messengers ought to be paid their fees and expense for execution, letters of horning, or caption, by the creditor employed, and not by any exactions from the debtor; and found that any messenger claiming, exacting, or taking from any person or persons under diligence, by horning or caption, any sums of money, or security for the same, under colours of fees or expenses, for executing or delaying of execution of any such diligence, or of going or coming to and from

any place or places, in order to execution of such diligence, is unwarrantable, illegal, and oppressive, and opens a door to high and grievous exactions from ignorant, distressed, and indigent persons; and found the said Alexander Ross hath been guilty of gross malversation in exercise of his office as messenger, by taking security for and charging exorbitant sums from the said Mr John Monro, under colour of fees and expenses, and for pains in going and coming to and from certain places, in order to the execution of caption for small sums, where no caption was truly executed, and particularly, &c. and therefore they deprived him, the said Alexander Ross, of his office of messenger at arms, and declared him incapable thereof in all time coming, and fined and amerced him in the sum of L.10 sterling, to be instantly paid into the hands of the clerk of Court, to be applied in such manner as the Lords should direct. And in respect of certain alleviations pleaded in behalf of the said Alexander Ross, they thought fit in this instance to proceed to no higher punishment. And the Lords ordained this judgment, for the better publication thereof, as a caution to messengers in time coming, to be recorded in the books of sederunt, and an extract thereof to be transmitted from the clerk of this Court, to be recorded in the Lyon Court book, to be published by him in the ordinary form.

No. 2. 1749, Feb. 28. *LIEUTENANT HOPE against DRUMMOND AND NICOL.*

LIEUTENANT HOPE, (13th January 1749,) represented that his father was become fatuous, and was by his friends committed to the Infirmary for his recovery; that while he was there, Drummond, the messenger, pretending to have a caption, broke into the room, though told what condition he was in, carried him to a tavern, gave him drink, robbed him of money, and then left him in the tavern, where he committed some outrages, and afterwards in the streets, till his friends got hold of him; and therefore praying by two several petitions, one to punish Drummond, and the other for warrant to the petitioner his son to detain him in the Infirmary, and produced a certificate of his condition from a physician. We gave a warrant to seize Drummond, and remitted the petition to an Ordinary to enquire into his condition, and report, and in the mean time granted warrant to detain him in the Infirmary.

28th February 1749.—Drummond executed a caption against the now deceased Sir Alexander Hope in the Infirmary, whether he had some days before been sent by advice of physicians for madness, and carried him to the house of one Little, a taverner, and after getting from him L.4, which he gave to his employer, Mrs Nicol, left him there, and after some rioting in the streets, he was sent back to the Infirmary, where in a few days he died. The son complained both of the messenger and Mrs Nicol; and a proof was led; but on an objection that her husband was not called, was delayed till June. As to the messenger John Grant, who was ordered to serve him, argued, and argued well, that Sir Alexander's disorder was no excuse to the messenger not to execute the King's letters; and Dundas, for the complainer, in effect gave it up, but argued it as an illegal, oppressive execution;—and the Lords found it illegal, and with a malevolent intention, to extort money; and deprived the messenger both of his office of messenger and notary, (which he also was,) and committed him for a month to prison. I doubted of the sentence, but gave no opinion.