

1738. November 4. MONRO *against* ROSS.

FOUND, That all messengers ought to be paid their fees and expense for executing letters of horning and caption, by the creditor employer, and not by any exactions from the debtor and the claimant, exacting, or taking from any person under diligence, any sum or security for the same, under the colour of fees or expense for executing, or for delaying to execute any such diligence, or of expense of going to or coming from any place towards the execution of such diligence, declared unwarrantable, illegal and oppressive, as opening a door to high and grievous exactions from ignorant, distressed, and indigent persons; and Alexander Ross, messenger in Tain, on account of repeated exactions of this kind from Mr John Monro, minister of Rogart, deprived of his office, and declared incapable thereof in all time coming, and fined in L. 10 Sterling; and the sentence, for the better publication thereof, ordained to be recorded in the books of sederunt, and an extract thereof to be transmitted to the Lyon, to be recorded in the Lyon-Court books, and published by him in the ordinary form.

THE LORDS have sometimes been in use, where messengers had committed such malversations as inferred deposition, to remit to the Lyon to depose them; but are now in use by their own sentence to declare them incapable, as was done in this case, and as they had before done in July last, in the case, Nimmo in Kilmarnock against M'Lesly and Henderson the messenger, (See APPENDIX); and wherein, in place of remitting to the Lyon to publish, they appointed their sentence to be published by the Sheriff of Edinburgh, and of the shire of Ayr, where the messenger lived, at the respective market-crosses.

*Fol. Dic. v. 1. p. 573. Kilkerran, (MESSENGERS.) No 1. p. 344.*

1744. July 20. LINDSAY, &c. *against* ROBERT DRUMMOND.

ROBERT DRUMMOND having got a commission from the Lord Lyon to be a messenger for the shire of Edinburgh, a bill of suspension was offered by the messengers of Edinburgh upon two grounds; *1mo*, The bad character of the said Robert Drummond; *2dly*, By the act 46th Parl. 11. James VI. the number of messengers to serve within the shire of Edinburgh is limited to twenty-four, whereof the Lyon and his brethren the heralds and pursuivants make seventeen; that the number is already completed; and that there is a *jus quaesitum* to the messengers already admitted to bar the admission of a greater number. This bill of suspension being reported to the Court, it was unanimously refused as incompetent. The President reasoned, That Mr Drummond was *de facto* a messenger by the Lyon's commission, and that it was not com-

No 5.

Messengers cannot exact their fees from the debtors.

No 6.

The number of messengers in the shire of Edinburgh, is, by statute, limited to 24. The Lyon, heralds, and pursuivants, are not comprehended in that number.

- No 6. petent to turn him out of his office by such an application to the Court of Session without first applying to the Lyon, against whose sentence there might be an appeal to the Court of Session, not otherways. Elchies said, That if the Lyon should name one to be a messenger who is infamous by a public sentence, or otherways rendered incapable, remeid might lie by a suspension; but was of opinion with the President in the present case. With regard to the number of messengers, the Court was of opinion, that the Lyon, heralds, and pursuivants, are not to be counted upon to fill up the number of messengers for the county of Edinburgh.

*Fol. Dic. v. 4. p. 1. Rem. Dec. v. 2. No 55. p. 84.*

No 7.

The executors of legal diligence ought to have access to the Castle of Edinburgh.

1751. July 4. THOMAS BELSHES *against* CORAN and KINLOCH.

THOMAS BELSHES, Deputy Sheriff-clerk of Edinburgh, complained upon Richard Coran, Lieutenant Governor of the Castle of Edinburgh, and David Kinloch of Conland, Lieutenant in the said Garrison, for that he being pursuing an action of sale of Mr Kinloch's estate, had obtained a second diligence against him, to exhibit the rights thereof, but that the messenger going into the Castle to execute the same, was stopt by the centinel at the gate, who said he had orders for that purpose from Lieutenant Kinloch, whom he was bound to obey; whereupon he returned an execution of deforcement.

*Answered.* It is allowed the King's letters must be executed within the Castle, as well as in any other place; but the nature of the case shews they cannot be executed in the same precise manner, or without some precaution to prevent abuses, or prejudice to the King's service: A messenger having got access to the Castle, and apprehended Campbell of Burnbank, an officer therein; and the Governor having ordered the gates to be shut, till the messenger dismissed him, the LORDS, 15th Dec. 1714, M'Kay against Campbell, *voce* SANCTUARY, assoilzied the Governor from a complaint then made; but ordained him to deliver Burnbank to any messenger, having the caption, and demanding him, in case of his being in the Castle at the time of the demand.

There is no act charged upon either of the respondents; but only that the centinel refused access, and said he had orders from Lieutenant Kinloch.

THE LORDS assoilzied the respondents from the complaint, but found the Commander of the castle was bound to grant access to messengers at arms, or other officers of the law, bearing the King's letters, in order to their executing the same.

*Act. Macdowal & R. Craigie. Alt. W. Grant. Clerk, Pringle.*

*Fol. Dic. v. 4. p. 1. D. Falconer, v. 2. No 218. p. 262.*