

1744. *February 28.* GABRIEL NAPIER *against* LORD ELPHINGTON.

No. 22.

LORD ELPHINGTON, by a contract with the Fire Engine Company, being bound for a certain tack duty for their engine, but to stop upon his coals stopping, or Lord Elphingstone's giving them due notice; and he offering to prove such notice by their books at London, for which end he got a commission; but Gabriel Napier, the pursuer, who pursued on an arrestment, as creditor to the Company, was found obliged to procure the Company's book's exhibited to the Commissioners; and it was thought the same rule would hold if a defender, sued as debtor to a foreign merchant, offered to prove payment by his books.

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1745. *February 12* THOMAS GRANT *against* WILLIAM JONES.

No. 23.

AN arrestment in the hands of many tenants in the Cannongate, used betwixt twelve at night of Sunday the 15th May, and one in the morning of Monday the 16th, at the doors of their dwelling-houses, in the usual form, because they could not get access, sustained to affect the subsequent Martinmas rent, and preferred to an arrestment at five in the morning of the said 16th day; notwithstanding a small mistake in the witnesses or of the clerk, might have brought the arrestments to be both on Sunday and the term-day; and though many of us doubted much if an arrestment in these silent hours of the night was lawful. (See DICT. No. 77, p. 3741.)

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1745. *June 9.*

CREDITORS of GLENDONING *against* MONTGOMERY of Magbichill.

No. 24.

A CREDITOR in a registrated protested bill, (but the protest irregular and false in sundry respects, being at a wrong place, and bearing a procurator's compearing and witnesses, though there truly was neither, yet the creditor knowing nothing of these defects,) having *bona fide* poinded his debtor's sheep, who was bankrupt; the other creditors arrested in his hands; and in a forthcoming, the Lords thought that he would not have been bound to restore to the common debtor either the sheep or the price, till he got payment of his debt; and therefore found him not bound to restore to these creditors arresting, and assoilzied. (See DICT. No. 51, p. 1449. and No. 34, p. 2573.)