

No 12.

A debtor, suspended on double distress, is entitled to retain his expenses; but, where he had shewn an anxiety to delay payment, his expenses were refused to be allowed.

1707. June 29. KEIR *against* CREDITORS of the EARL of WINTON.

ADAM KEIR, baxter in Edinburgh, having bought a quantity of wheat from Mr Christopher Seton, who acted as *negotiorum gestor* for the Earl of Winton, his brother, and being distressed by sundry of the Earl's creditors competing on their arrestments, and other diligences, he suspends on double poinding; and, after debate, Hugh Brown, chirurgeon, is preferred; and now Keir craves, that he may detain, out of the first end of the sums owing by him, L. 57 Scots of expenses they had put him to in defending, that he might be only liable in once and single payment; for, when debtors are put to processes without their own default, it is both just and reasonable that their expenses be allowed them, seeing *nemo debet militare suis impensis* in such cases.—THE LORDS thought this a general case, and required mature deliberation. If a party was always ready to pay, and sought nothing, but that he might do it securely, it seemed equitable he should be indemnified and reimbursed; but having considered his account, with the steps of the process, found he had by bills retarded the advising of the cause, and seemed too willing to detain the money in his own hands from the creditor; therefore, because of his shifting and delay, found he had forfeited his claim; and the Lords refused to give him any expenses.

In this case, it was likewise found, that though Christopher sold the victual, and entered into the contract with Deacon Keir, and the price was made payable to him, yet, in a competition betwixt his creditors and his brother, the Earl's creditors, to whom the victual belonged, were preferred, in regard it was proven, that the victual grew on the Earl's lands of Longniddry; and though Mr Christopher was creditor to his brother in a considerable sum by a bond of provision, yet not having affected this particular subject, the victual was found to be the Earl's.

Fol. Dic. v. 1. p. 287. Fountainball, v. 2. p. 373.

S E C T. III.

Expenses of Plea.

No 13.

Expenses and a fine awarded for a vexatious and improper prosecution.

1675. June 28. LIVINGSTON *against* GARNER.

A BOND being granted for payment of a sum, and thereupon the granter having suspended in his own time, and a decret of suspension being recovered in