

was found relevant, being proven, to liberate the magistrates ; seeing neither they, nor the keeper of the jail or prison, was alleged to be accessory, or to know of the escape, or that they had failed, or alleged to have omitted to do any thing which, in such cases, are incumbent to be done by them, in their duty of their offices ; neither did the party qualify any insufficiency to have been in their tolbooth out of the which the rebel escaped ; but, by the contrary, the bailies offered to prove it to have been always sure and sufficient as other warding-houses are, for keeping of prisoners, before this violent escape done in the night.

*Act.* ———. *Alt.* Chaip. *Vid.* 13th July 1630, Hay ; 21st November 1628, Lockie ; 11th November 1634, Bower ; *penult* January 1627, Ker.

*Page 592.*

1631. *July 8.* CAMPBEL of ARDCHATTAN *against* The PAROCHIONERS of KINNIVAR.

IN a spulyie of teinds at the pursuer's instance, as infest upon the erection of Ardchattan, erected heritably to the pursuer's father, *in anno* 1602 ; wherein the defenders alleging, that that title of erection was null, being granted in the year 1602, after the 119th Act of Parliament, 1592, *which prohibits any erection to be granted, and declares all hereafter to be granted to be null* ; and the pursuer answering, that this Act meets not in this case, where the spulyie is not for teinds of kirk-lands but for teinds of other temporal lands, whereas the Act only *prohibits erection of temporality, or of teinds of kirk-lands*, as thir teinds are not ;—the Lords repelled this exception, *hoc loco*, to annul the infestment libelled, by way of exception, upon the reason of the said Act of Parliament ; which Act, the Lords found, as it was conceived in the tenor and words thereof, and in the prohibition therein, extends only against erections of temporalities and teinds of kirk-lands : And albeit the meaning of the Act and rubrick thereof would seem to be alike for all teinds ; yet, the tenor thereof being so specific, the Lords found that they could not enlarge the Act but by ordinance of the Estates. And so they found that the exception ought to be repelled in this place, and that the nullity ought not to be received, *ope exceptionis*.

*Act.* Mowat. *Alt.* Primrose. Gibson, *Clerk*.

*Page 593.*

1631. *December 9.* JOHN GRAHAME *against* STIRLING.

JOHN Grahame being donator to the escheat of umquhile John Grahame of Callendar ; and, after general declarator, having also obtained sentence of special declarator against Stirling, relict of the said umquhile rebel, and her second spouse for his interest, for certain particulars, for which she was convened, as intromitted with by her after her husband's decease, and which were referred to her oath, and whereupon she was holden as confessed, upon her not compearance after citation ; which decret being suspended, and craved to be re-