

interests, are the subject of their jurisdiction and decisions : And therefore it was provided, by divers Statutes and Acts of Parliament, they should be qualified persons ; and found upon trial to be such.

2. His Majesty's letter required that the persons now named should be examined effectually.

3. By divers Acts of Sederunt, and, in special, one upon the King's letter for the time, the way of trial is prescribed, which is most exact.

4. The oath of admission, that the Lords should be faithful, has, and ought to have influence upon all their actions, as Lords of the Session, that they should be done faithfully : and the trial of Lords, for the reasons foresaid, being an important act of duty, ought to be done faithfully and sincerely ; and cannot be done otherwise, without breach of oath.

5. To pretend to obey the law, and the King's letter, (which requireth an effectual trial,) in a way which is superfiary, and evidently ineffectual, it is a cheat and *circumventio legis* : which in others is hateful ; but in judges, who are *antistites juris*, is abominable ; and inconsistent with the honour and integrity that should be expected from the judicatory.

6. If there were no trial at all the Lords would be passive, if persons not qualified should be named : but being enjoined to try effectually, if they receive them without an effectual trial, they are not free of blame ; and are accountable to God, and his Majesty, and to the Parliament.

To all these reasons it was ANSWERED, That at this time, the way of trial that had been for a long time, should be continued at this time ; and that the motion was upon some design.

The mover did purge himself, upon oath that he had no design, but to do duty : and did attest the president, that before this occasion they had spoken often to that purpose : and did represent, that this is the fit time to put the law and statutes in execution ; the persons named being advocates, and persons presumed to be able to undergo the trial ; so that it cannot be thought that there is any thing of design against their persons. That it cannot be denied but the late way is abusive ; and *antiquitas erroris*, or *abusus*, cannot be thought and pleaded to be custom. That in the year 1629, the Lords, by an Act of Sederunt, had renewed and ratified all the former statutes anent the trial and admission of the Lords ; and ordained them to be observed : That since that time the troubles intervened and continued long ; so that prescription cannot be pretended for an abuse which had occasioned so great prejudice and clamour.

It was CARRIED, That the examination should be as it has been of late. And upon the report of Gosford and Craigie, (appointed to examine them,) they were admitted. Gosford was of opinion that there should be another way of trial.

Page 71.

1674. June 6.

ACT OF SEDERUNT.

THE Lords thought fit to make an Act of Sederunt, and to intimate it to the advocates, to the purpose following, *viz.* :—That when an allegiance is not admitted, but a joint probation is allowed before answer ; if there be any other al-

leageance found relevant, and admitted to either, litiscontestation should be understood to be made as to that allegiance. 2. And likewise as to that effect, that the parties are concluded; and cannot be heard thereafter to propone any other allegiance. 3. The terms being run as to allegiance not discussed, they are concluded as to the probation of it; as if the relevancy had been discussed by a formal act of litiscontestation: whereas it is remitted to be considered after probation: seeing often *ex facto oritur jus*; and, upon consideration of the circumstances after probation, the Lords have more clearness to determine relevancy.

Page 74.

1674. June 12. FREEHOLDERS of LINLITHGOW *against* The COMMISSIONERS to the PARLIAMENT.

IN a suspension, at the instance of the Freeholders of Linlithgowshire, against their Commissioners to the Parliament;—

The Lords found, That if the prorogations and recesses of Parliament be for a considerable time, so that the Commissioners do or may go home, the Commissioners should not have their fees or charges during the same. 2. That if the prorogation be for a short time, and the Commissioners, having their residence at a little distance, in Edinburgh, or Linlithgowshire, do or may go home, they ought not to have fees during that time. 3. If there be Articles sitting during that time, and they do not go home, though they be not upon the Articles, they should have their fees; because they are concerned to know and inform themselves, what is in agitation in the articles.

Newbyth, *Reporter*. Monro, *Clerk*.

Page 76.

1675. January 5. PITTARRO *against* The EARL of NORTHESK.

THE Earl of Northesk, having taken an assignation to a bond, granted by the deceased Laird of Craig and Earl of Dundee to Margaret Carnagie and her children for 1000 merks; and having comprised thereupon Craig's estate; he did, after the comprising, give a bond to the said Margaret Carnagie and her children, that, in case he should recover payment, he should make payment to them of the foresaid sum.

Sir David Carnegie of Pittarro, being debtor to the said Earl in the sum of 2000 merks, SUSPENDED upon that reason;—That the said Margaret and her children had assigned to him the said back-bond, granted by Northesk; and, that the said Earl had disposed the right of the said apprising to the Lord Hatton; and therefore became liable to pay the said sum to the suspender's cedent; and the suspender may, and does compensate upon the said bond, *pro tanto*.

It was ANSWERED by the charger; That the comprising did neither belong to the suspender's cedent, nor was to their behoof; the said bond, granted by the Laird of Craig, being assigned *ab initio*, without any back-bond; and the com-