

in the Act 1663, Against Protections, that court is not mentioned. Yet I think they may, for they are a sovereign court, and a committee of Parliament, and it is inherent in every judicatory to have a power to explicate their own jurisdiction, and make it effectual.—*2do*, It was debated,—seeing the Act 1672 requires two officers of state, two prelates, two barons, &c. to be a *quorum*,—if there be three officers of state present, and but one baron, if one of the officers of state may be computed a baron, (being likewise of that rank and degree, though not so named in the Act of Parliament,) to make up and supply a *quorum*.—*3tio*, A disposition to lands and teinds has been sustained in that court as sufficient to pursue a valuation of teinds, they producing a seisine *cum processu*. But I speaking with the King's advocate anent this custom, he condemned it as illegal, seeing a real right should be produced *in initio, ad fundandam litem* for valuing of teinds. *Vol. I. Page 133.*

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1681. *February 26.* RIDDEL of HAINING *against* ELLIOT.

THE case of Riddel of Haining and Elliot was much agitated. One accused of theft had found caution, under the pain of 5,000 merks, to answer at the court kept by the Commissioners of the Borders; and he not appearing, and thereupon they having found by their decret that the bond was forfeited:—of this decret there was a suspension passed by the Lords of Session. Whereupon a complaint was given in to the Lords of Privy Council by the Commissioners of the Borders, that their commission, flowing upon the broad seals of both kingdoms, conform to the 2d Act, Parl. 1612, they were not accountable to the Scotch Council.

The Lords of Council found not themselves judges competent to the decreets of these Commissioners, but found their determinations ultimate, and not to be revised by any but by his Majesty and the Parliaments of the two nations.

Then, against the Lords of Session, it was ALLEGED, for the Commissioners, That the matter was no ways civil but criminal, and so fell not within the compass of the Session's cognizance.

The President and other Lords, waving that question anent the interfering of jurisdictions, found the letters orderly proceeded in Haining's favours, and repelled the reasons of suspension. Which was tacitly to assume a power of judging these decreets. See *3d October 1677, Rutherford. Vol. I. Page 134.*

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1681. The POOR of the WEST KIRK, or St Cuthbert's, *against* JANET WILLIAMSON.

*February 22.*—THE Poor of the West Kirk parish against Janet Williamson being heard in presence; the Lords found the discharge of the same date with the bond, declaring the sum in that bond was the Poor's money, (though it was blank in the creditor's name,) to be of the nature of a back-bond, and so *pars obligationis*; and therefore preferred the Poor (Mr James Elies, their treasurer's name, being now filled up therein,) to the said Janet, the arrester for Alexander Sked's debt: to which Alexander the said bond was delivered blank; and he, being then treasurer to the said Poor, and their debtor, filled up the name

of his successor in office : except the said arrester offers to prove, by the witnesses inserted, that the discharge is antedated : in which case they allow her diligence for citing the witnesses to the 26th of February next. See thir parties at that day.

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*February 26.*—The Poor of the Parish of St Cuthbert's against Janet Williamson, (22d Feb. 1681.) The Lords, having considered the deposition of one of the witnesses in the discharge, denying it to be a true date, find the same cannot improve it, (yet it may render it null,) if the other witnesses do approve; and therefore ordain the other witnesses to be cited and examined; and allow both parties the indirect manner for improving or approving of the same, providing Mr James Elies, betwixt and Wednesday next, compear and abide by the said discharge produced and used by him; in which case they ordain the said Janet, the improver, to consign £30 Scots in the clerk's hands; and if, before the said time, the said James Elies do not abide by it, then they prefer the petitioner, Janet Williamson, and ordain her decret to be extracted; and allow Mr James to protest in his abiding, that it is only as kirk-treasurer, &c.; or otherwise, as he thinks fit.

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See *12th December 1679, Robertson against Robertson; 15th July 1681, Comblin against Corby; and 9th December 1681, Nisbet against Westkirk*, the continuation of this case.

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1681. *March 4.* ROBERT MILN *against* SIR PATRICK HOME.

ROBERT Miln, tacksman, &c. against Sir Patrick Home of Polwart for customs, &c. ALLEGED,—He exported and imported nothing but for his own use; and whatsoever is so done by noblemen and gentlemen is exemed from paying of custom by express law; Act 152, Parl. 1592, Act 251, Parl. 1597, and the other laws and authors there cited. ANSWERED, I.—This Act does not liberate from Excise, which is a tax and burden invented and imposed since these Acts, and the exemption is not repeated in the Acts anent Excise. II. The Parliament's grant of the customs to the King in 1661 has innovated this; and there is no reservation in favours of gentlemen. III. No other import is exemed from customs but what is the product and immediate return of our own exported commodities; which this was not. REPLIED,—It is enough that it is not rescinded nor taken away.

This touches the gentry in their copyholds and ancient privileges.—It was continued.

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1681. *June 3.* PATRICK GARDINER *against* The LADY TORWOODHEAD and WILLIAM BAILLIE, her Son.

THE Lords, having heard Newton report the debate, found the inhibition against James Lord Forrester could take no effect against the infettment of wadset, though posterior, granted by him to William Baillie of Torwoodhead, his brother, if the granter thereof was obliged to give an infettment either of wadset or of annualrent, (though this last seems not to be a specific implement of the anterior obligation,) and that either personally himself, or as representing