

inserted in the draught of a bond required of him, acknowledge a guilt which he denied ; and that he was not bound to depone upon such injurious expressions, and so could not be holden as confessed thereon ; and that the Magistrates, by their answers, had passed from the fine, and so could not now insist for it ;—the Lords thought justices of the peace were not tied to the forms of other courts but in petty riots ; and, for vindicating their own jurisdiction, they might proceed *de plano, sine strepitu et figura judicii* ; and that citizens were not to be enraged against their Magistrates ; and, on the other hand, they are not to be armed with too much power to oppress their burghesses. Therefore they ordained the bond to narrate his faults as a part of the decreet pronounced against him, and not as his confession ; and did not allow the Magistrates to retract their offer of passing from the fine on his subscribing a bond ; and restricted the penalty to £100 Scots ; and, on his granting such a bond, ordained him to be set at liberty.

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1695. *November 19.* The INHABITANTS of LEITH *against* The MAGISTRATES of EDINBURGH.

A BILL of suspension was given in by the Inhabitants of Leith, against the Magistrates of Edinburgh, of an unjust quota and proportion of cess laid upon them for their houses and trades, to relieve Edinburgh *pro tanto* ; and, to facilitate the passing of their suspension, they also raised a declarator of their privileges and exemption from any such illegal impositions, and that they ought to pay only for their ground, and be stented and assessed with the shire ; and could not relieve Edinburgh of any share of their quota, unless they would allow them to be a royal burgh, (for which they had once an erection in Queen Mary's regency ; ) or else give them a participation of trade ; which, by the 31st Act of Parliament 1693, is communicated to burghs of barony and regality.

ANSWERED,—The Town of Edinburgh, in paying all their public burdens, not only assessed the royalty, but all their dependencies, and Leith amongst the rest ; and it is so provided by the 14th Act of Parliament 1661, dividing the excise amongst the several shires and burghs ; and the Canongate might as well plead immunity as Leith ; and, at this rate, the payment of the King's cess may be altogether stopped and disappointed.

The Lords, considering that, for many years bygone, Leith had borne a part of the Town of Edinburgh's quota, and if the inhabitants of Leith were grieved, they might get retention or redress in subsequent terms' cess not yet fallen due, and to stop the custom might create confusion ;—they refused the Town of Leith's bill of suspension, but prejudice to them to insist in their declarator, as accords ; and would not summarily invert the Town of Edinburgh's possession.

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1695. *November 20.* BAIRDNER of CULTMILN *against* The LORD COLVIL and OTHERS.

IN the action pursued by Bairdner of Cultmiln, against the Lord Colvil and

others, anent his right to a servitude of pasturage in some lands,—the defence in the act of litiscontestation being that they had prescribed an immunity from the pasturage, and the reply being on interruption; the reply was proven, but not the defence; whereon my Lord Colvil craved to be reponed to other defences, seeing he was minor at that time, and abroad. The Lords reponed him, if they were *in jure* and instantly verified.

Then he ALLEGED that the pursuer's title was null, being a feu of kirk-lands granted by the Abbot in 1553, and neither confirmed by the Pope nor the King, as is required by the 7th Act of Parliament, 1584. The Lords found the said defence relevant and proven by the charter lying in process; but sustained this answer for eliding it, that they offered to prove confirmed.

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1695. *November 27.* WILLIAM KING and INGLIS *against* ORR and OLIPHANT.

THE suspension presented by William King and Inglis against Orr and Oliphant was reported by Arbruchel. The charge was on a decreet of removing from a shop at the head of Niddry's Wynd in Edinburgh. Their reasons were, That, albeit the decreet was given declaratory before the term, yet it decerned expenses where there was as yet no contumacy; and that he offered to prove, by the charger's oath, she promised never to remove him so long as he paid the former maill; and that, by the perpetual custom of that shop, the entering tenant bought always the brittle ware of his predecessor, as their glasses and lame-pots, &c. All this being formerly discussed, the Lords now repelled the same. Whereupon they recurred to a new reason, That they offered to prove she had consented to a set for another year, and taken earnest thereon. Some doubted of the competency of this allegiance now, after she had, upon oath, denied any promise not to remove them. However, the Lords sustained it, that she might clear her meaning; but *cum onere expensarum* if they succumbed; but especially to consider how far she may be made liable to the succeeding tenant for his damage in not being duly entered; and modify the same against him, if it shall be found that he sat violently contrary to law.

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1695. *November 28.* MR JAMES KIRKWOOD *against* MR JACK.

MR James Kirkwood, late schoolmaster at Lithgow, now at Kelso, having been pursued before the Presbytery for some indecencies in his employment, he raises a pursuit, before the Commissaries of Edinburgh, against Mr Jack, minister at Kelso, for slanderous and reproachful expressions; that he was destitute of the grace and fear of God, and unfit to be trusted with the education of youth, and such like words. The minister presented an advocacion of this process to my Lord Philiphaugh; upon whose report the Lords advocated the