

and declared in their favours. And, as to the accidental inconvenience of noise, a public good was not to be stopped on that account ; though the French lawyers tell, that a professor having complained that a smith dwelling next him disturbed his own and his scholars' studies, the judge ordained him to flit and remove to another part of the town. And yet a smith is as necessary a member of society and republic as any professor of law : Both are useful in their own kind. And, as to expenses, the Lords ordained the pursuers to give in a condescendence and account of the same, that they might consider thereupon.

It was OBJECTED against some of the witnesses, That, being burgesses, they were parties ; and so might tine and win *in re civitatis*.

The Lords thought, If it were in a common pasturage belonging to the city, where all the witnesses had a liberty to put in their goods, there might be suspicion ; but there was no ground for it here : and so repelled the objection.

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1706. *June 12.* LORD LINDORES *against* WILLIAM FOULIS and SIR JOHN FOULIS.

DAVID Lesly, now Lord Lindores, gives in a petition, representing, That he was infest by his father, *in anno* 1694, in the fee of the lordship of Lindores ; and the seasine duly registrate by Sir John Foulis : But that, the principal seasine being amissing, he had applied to John Macfarlane, who was notary to it, and got another principal from his protocol-book ; and, by good providence, two of the witnesses being still in life, he had got their subscriptions and attestations likewise : but when he brings it to Mr William Foulis, now keeper of the register of seasines, and to Sir John, his father, who had marked the former, they both declined to do it :—Sir John, because he was *functus* and exauctorate, having demitted in favours of his son, who is now *in officio* ; and Mr William refused, because it would be a sort of falsehood in him to mark a seasine of a date long prior to his entry, and when he was not keeper.

The Lords thought such a defect ought not to want a remedy ; but some proposed a proving of the tenor. Others said it might be granted *periculo petentis* ; but the plurality thought they might warrantably ordain Mr William, the present keeper, to mark it : and that there neither might be alteration, nor vitiation of the registers, which were dangerous, they appointed their act and warrant to be marked and inserted on the margin of the register where it was first recorded ; which would bear the *res gesta* : and this was no new thing, for they had granted the like to Sir Andrew Ramsay on his supplication, as is observed by Stair, *January 2, 1678.*

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1706. *June 21.* GILBERT MONTIER *against* JAMES MACJARROW.

GILBERT Montier, factor at Rotterdam, gave in a petition, representing, That, on a commission from James Macjarrow, merchant in Air, he had sent him a parcel of indigo and other goods to the value of 187 guilders, in George Walker, skipper in Borrowstonness, his ship ; but, before arriving of the ship, the said