

fore in the magistracy, which some of these pursuers had not, and so no process can be sustained at their instance. *2do, Esto* the debt be now greater than it was in 1693, yet they can rationally exculpate themselves by a great many emergent burdens the town has fallen under since that time, as an augmentation of their quota and proportion of the tax-roll, laid on by the convention of burghs; *item*, Their missive dues, the expenses in a debateable election, the reparation of Ancram bridge, and many other incidents, which has drawn them into so much debt. *Answered*, This can never palliate their smuggling-trade of preying upon the town's common-good; for they offer to prove, beside their constant revenue, they had their mills and ladle-custom to defray all these extraordinaries; and though the present Magistrates brag they have not enriched themselves thereby; yet it is all one, if by drinking, squandering, or negligence, they have drawn the town into unnecessary debts; for, by the title *D. De administrat. rer. ad civitat. pertinen.* it is evident Magistrates are liable not only *pro dolo et lata culpa*, but likewise *pro leve, et negligentia*; and the common-good of burghs coming from the crown, they are, by sundry acts of Parliament, to make yearly count how they have employed the same, as appears by act 36. 1491, and act 26. 1535. THE LORDS thought the point of general concern to all the royal burghs of Scotland; and therefore named some of their number to examine the accounts, and endeavour to settle the two contrary struggling factions in this burgh.

*Fol. Dic. v. 1. p. 496. Fountainball, v. 2. p. 379.*

1735. February 14. MONCRIEFF of [Reddie against PATRICK MAXTON.

THE right to a stipend is a civil right, and therefore the Court of Session has a power to cognosce and determine upon the legality of the admission of ministers, *ad hunc effectum*, whether the person admitted shall have right to the stipend or not. See APPENDIX.

*Fol. Dic. v. 1. p. 495.*

1741. Feb. 19, & June 17. NEWLANDS against NEWLANDS.

IN a complaint at the instance of Barbara Newlands against Alexander Newlands, for a very heinous offence, no less than subornation of perjury on a commission from the Lords to London, the said Alexander having absconded; a question occurred, under what certification the Court could appoint him to appear, and in what manner? And the Lords Elchies and Arniston, to whom it was remitted to look into the books of sederunt for precedents, having reported and pointed out to the Court several cases, in which parties had been appointed to appear under pain of rebellion and being put to the horn; the

No 67.

No 68.

No 69.

A person having absconded upon a complaint against him for subornation of perjury, the Court granted warrant for citing him to appear under pain of rebellion and putting to the horn.