No. 57. 1752, Jan. 15. ARCHIBALD and ALEXANDER M'DUFF *against* MELISS.

ARCHIBALD M'DUFF wanting a hogshead of lintseed to sow, applied to Alexander, whose lintseed not being come home, applied to Meliss for a hogshead, to be repaid by a hogshead of Alexander's when come. Mellis had bought a hogshead from Boog, at least from M'Donald, who had bought two from Boog, out of six hogsheads that he had bought from Colin Brown, the importer, and the whole was in Colin Brown's cellars; therefore Meliss carried the two M'Duffs to Brown's cellars, where Archibald got, and carried away a hogshead of lintseed, which Alexander M'Duff repaid with a hogshead of his own. The hogshead proved insufficient after being sown, and therefore Archibald and Alexander M'Duff sued Meliss before the Magistrates of Perth for damages, and the Magistrates decerned in L.4. 15s. as the value of the lintseed, in terms of the act 13th Geo. II. and L.2 10s. sterling of fine. Meliss obtained suspension;—which coming before Lord Monzie, he found suspension not competent, and this day we adhered. Kilkerran thought that a loan of lintseed, or exchanging it, would not fall under that act, which mentions selling or vending;—and I at first had the same difficulty, till I considered that Archibald M'Duff bought the lintseed, and therefore he surely had action on the statute against one or other; and surely it was more proper against Meliss than Alexander M'Duff; and if he had it even against Alexander, then Alexander must have it against Meliss, though the case might be different if a farmer who had got lintseed only for his own use, for sowing his own grounds, not then ready, should lend it to a neighbour whose ground was ready, to be repaid in kind;—but Kilkerran observed further, that if we allowed barter or exchange not to fall under the act, it might often be eluded, and that of old most sales were by barter, and are so still in many places.

No. 58. 1752, Feb. 19. MARGARET SEMPLE *against* ELSPETH MARSHALL.

MARSHALL sued Semple for coming into her house, and without provocation, beating and abusing her, and concluded for a fine, and to be otherwise punished. The Sheriff of Edinburgh found the libel relevant, and examined one witness, the pursuer's daughter, —when the cause was advocated. Dun remitted the cause, and Semple reclaimed, for that, 1st, there was no warrant for the citation to the Sheriff Court; 2dly, it being libelled by way of hamesucken and punishment besides the fine concluded that might go very deep, and could only be tried by a Jury; 3dly, that the daughter was an inhabile witness. But we adhered. We found indeed the Sheriff's proceedings irregular; but now the process was by the defender brought to this Court, and no new citation was necessary, therefore thought the Sheriff proper to remit to. Magistrates of burghs and Justices of Peace, as well as Sheriffs, try all manner of riots without Jury, when the punishment goes even the length of whipping, correction-house, or banishment out of the jurisdiction; and the place made the daughter a necessary witness.