

other deed of the party; and the reconciliation may only be thought to take away of future grudge and quarrel, and not of the preceding action, and civil pecuniary pain.—To this was *duplied*, That their reconciliation was an express remitting and forgiving of the deed of contravention, which being remitted, the pain cannot be craved by the party; neither could the King have any action, when the interest of his informer was decided, because of our practise the party informer *ante litem contestatam est dominus litis*. Notwithstanding of which exception and duply the LORDS found, That not only the King, but likewise his informer had good action. A case in some respects conform to this was decided before, betwixt the Laird of Craigiehall and Kinninmound.

Fol. Dic. v. 1. p. 534. Haddington, MS. No 1289.

No 13.

1607. February 27.

M'KIE against M'KIE.

IN an action pursued by M'Kie against M'Kie for the contravention of an act of the burrow court of Wigton, wherein the said M'Kie obliged himself and his cautioner, that the other should be harmless, &c. under the pain of L. 500, because, after the said act, he had drawn a sword, and pursued and invaded the other M'Kie; it was *excepted*, That this fact could infer no contravention nor penalty, because it was *modo conatus sine damno aut effectu*.—It was *answered*, That the invasion was relevant without any farther qualification. In respect of the which summons and reply, the LORDS repelled the exception. The Advocate compeared thereafter, and according to his desire was admitted for his Highness, and *alleged*, That the half of the penalty could not appertain to the Provost and Bailies of Wigton, but to the King; because that all acts of caution found for keeping the King's peace, under pecuniary pains, in cases of contravention, make the half of the pain to fall to the King's Majesty, unless the act bear the express contrary, which is not in this case.—It was *answered*, That albeit the King had right to the half of the penalties resulting from the contravention of lawburrows, found in the register of Session or Privy Council, yet penalties of troubleance within burgh pertain to the Magistrates of the same. Notwithstanding whereof the LORDS found, That the King's Majesty and his Treasurer had right to half of the penalties foresaid.

Fol. Dic. v. 1. p. 534. Haddington, MS. No 1338.

No 14.
Drawing a sword to invade a man, though no harm followed, was found sufficient to infer contravention.

1609. December 2.

KILSPINDIE against LEARMONTH.

THE Laird of Kilspindie being charged to find lawburrows to Patrick Learmonth in Aberlady, under the pain of 5000 merks, for eschewing the danger of horning, found caution; and being thereafter pursued for contravention, the

No 15.
A person was charged for an exorbitant penalty

No 15.
of lawburrows, and found caution. Afterwards contravening, he was decerned to pay that penalty, and actually paid it. Having suspended, and craved modification in time coming, this was allowed him.

same being proved against him, he paid the said sum of 5000 merks; and finding himself greatly prejudged, he sought thereafter a suspension of the said charge of lawburrows, for modification of the exorbitant pain therein contained. Which matter being reasoned, some of the LORDS alleged, That, seeing he had given obedience by finding caution absolutely, without any suspension in the beginning, and that since syne he had committed a violent contravention, which was proved against him, there was no reason to modify the same.—It was *answered*, That the pain was immoderate, an evil direct from the beginning; and albeit he had obeyed by finding of caution, that took not from him liberty to seek it to be thereafter modified by suspension; and if he had committed any contravention *medio tempore*, he had paid dear for it; but seeing he sought modification only for times to come, it could not of reason to be refused, having respect to the quality of the persons; in respect whereof the LORDS modified the pain to 1000 merks in time coming.

Fol. Dic. v. 1. p. 533. Haddington, MS. No 1673.

No 16.

1609. December 21. BRUCE against LAIRD of CLACKMANAN.

IN a contravention pursued by Bruce of Greenyards against Clackmanan, the libel was found relevant, because that Clackmanan struck the pursuer with his neif upon the breast, and drew his whinger and struck at him therewith, albeit there was no hurt done.

1610. January 13.—IN a contravention pursued by Bruce of Greenyards against Clackmanan, for two invasions of him for his slaughter, one in 1604 by Clackmanan's self, and another in 1609 by Clackmanan's servant Donaldson; it being *urged* for Clackmanan, That ane only pain of lawburrows should be granted, the LORDS repelled the allegiance, in respect of the long distance of time betwixt the two facts, and that they were both personal invasions.

Fol. Dic. v. 1. p. 534. Haddington, MS. Nos. 1709. & 1734.

1612. July 14.

LORD THIRLESTANE against PATRICK HEPBURN of Newmills.

No 17.

HE who charges a man with lawburrows for fear of his oppression in his goods, lands, and possessions, not making faith before the charge, may supply it, making faith when the matter is brought in question by suspension.

Fol. Dic. v. 1. p. 332. Haddington, MS. No 2478.