

No 22.

No nullity in lawburrows, that the letters did not command the messenger to take the party's oath that he dreaded bodily harm, and that the oath was not taken.

1627: December 7. L. CLACKMANNAN *against* L. FINGASK.

IN a contravention betwixt Clackmannan and Fingask, the LORDS found no necessity that letters of lawburrows should contain a charge and command to the messenger, executor thereof, to take the oath of the party at whose instance the charges were to be executed, that he dreaded bodily harm of the party to be charged; and that the letters and charges of lawburrows might be sustained, albeit they bore no such command within the body thereof, and albeit the messenger executor took no such oath; and found that the omitting of that clause in letters, and the officers not taking of the party's oath, was no cause to make the act of cautionry to cease, which was found by the party for obedience of the charge, or to infringe the force of the letters of lawburrows, as if they had been null for that effect; but if the party charged had suspended the charge, and desired the charger's oath foresaid, before he had found the caution, he would not have been compelled to have found the caution, until the time the other party had given his oath. But this decision upon hope of agreement was not pronounced.

Act. *Hope.*Alt. *Aiton & Hay.*Clerk, *Hay.**Fol. Dic. v. 1. p. 533. Durie, p. 318.*

No 23.

1628. July 8. SEMPLE *against* CUNNINGHAM.

IN a contravention, John Semple *against* Cunningham, the LORDS sustained the pursuit, only founded upon a charge given by the pursuer to the defender, to find caution of lawburrows, albeit no horning followed thereupon; but it was sustained, because the pursuer *replied*, that before the deed libelled, whereupon contravention was craved, the defender had found caution, conform to the charge, and he pursued not the cautioner, but the principal party, who was charged; which reply was sustained with the summons, albeit the libel was not founded upon the said act, but only upon the charge.

Act. *Nicolson.*Alt. *Cunningham.*Clerk, *Gibson.**Durie, p. 385.*

No 24.

1628. July 9. A. *against* B.

A party being charged to find lawburrows and find caution, although he enter in friendship and familiarity with the party charged, yet thereby the lawburrows are not discharged, except it be expressly by writ; and in case the

party that had found caution had committed contravention, it will be no exception to allege the familiarity since the finding caution. No 24.

Fol. Dic. v. 1. p. 534. Auchinleck, MS. p. 31.

1628. December 16. ——— against FEUERS of Glasgow.

No 25.

AFTER the contravention be committed, the pain of lawburrows cannot be modified by suspension, but for times to come.

Auchinleck, MS. p. 31.

1629. January 23. A. against B.

No 26.

SOMETIMES injurious words, and spitting in the face, are found a contravention, although no harm and hurt be qualified; but the LORDS found the libel relevant, and declared they would have consideration of the probation.

Fol. Dic. v. 1. p. 534. Auchinleck, MS. p. 31.

1629. February 3. ANDERSON against BLACKWOOD.

No 27.

IN an action of contravention pursued by George Anderson against Thomas Blackwood, the pursuer libelled, that he having a going coal in Patrick, and the defender having a wasted coal-heugh upon the croft and rising of the pursuer's coal, out of which the pursuer had drawn all the waste water which could hurt his coal, the defender, out of malice that the pursuer should have a coal going, his own being wasted, let in the water of Kelvin in his own wasted heugh, which presently drowned the pursuer's going coal, to the pursuer's great loss, and prejudice of the country. THE LORDS would not sustain this libel to infer a contravention, but ordained him to pursue for damage and interest, if he had any; for they thought there was no violent deed libelled; and it might have been likewise that his coal was wasted as well as the defenders, so that he could not sustain great prejudice by the defender's deed; in which case, it had been hard to have condemned him in 1000 merks for the pain of contravention.

Fol. Dic. v. 1. p. 534. Spottiswood, (CONTRAVENTION), p. 74.

It was found no contravention to let in water upon a coal-pit. The party might prosecute for damages.