

1664. December 16. INNES *against* FORBES of Touchon.

INNES having charged Forbes of Touchon on an act of adjournal, for an assythment, for wounding him, and reparation of his blood, he suspended, and *alleged* the act was null, wanting citation, compearance, or probation. It was *answered*, That being the act of the Justice-General, who is supreme *in criminalibus*, it cannot be recognosced by the Lords.

THE LORDS having considered the case amongst themselves, thought that in what was truly criminal, as to corporal pains or americiaments in way of punishment, they would not meddle with the Justice's sentences; but assythment, being civil for the damage and interest of the party, pursuable before the Lords, they might recognosce thereon; and therefore in respect that the probation of the fact was by a process before the bailies, they ordained that process to be produced before answer, and the suspender to condescend if there was any exorbitancy in the sum decerned for the assythment.

Fol. Dic. v. I. p. 498. Stair, v. I. p. 241.

No 130.
The Court of Session competent to review the Justice General's decree for assythment.

1684. March 9. STRACHAN *against* COMMISSIONERS of JUSTICIARY.

STRACHAN of Glenkindie having pursued a reduction of an act of adjournal, declaring, that he had forfeited his bond of 20,000 merks, which he had given for presenting of two witnesses before the Justiciary against himself, he being pursued for a murder; the reasons of reduction were as follows; *imo*, That the Justiciary had done wrong, in extorting the said bond from him *metu carceris*, contrary to the common principle of law, by which no defender is obliged to furnish probation against himself; *2do*, That the aforesaid bond was fulfilled, in so far as he, not being able to keep the precise day, by reason of storm of weather, he presented the whole witnesses the next Court day. It was *answered*, That the Justiciary was a sovereign court, and the acts or decreets of the Commissioners of Justiciary could not be quarrelled before the Lords of Session; *2do*, That the crime for which the pursuer was accused being murder, and there being great evidence thereof, by depositions of witnesses before the Justiciary, they might very legally commit him to prison; and he, for shunning the imprisonment, granted this bond: And it was most just in itself, seeing he had withdrawn the material witnesses, and kept them up in close cellars for several days, and thereafter sent them off the country, and the bond was forfeited, upon the account of not presenting of the persons, who were material witnesses—
THE LORDS found the Justiciary was a sovereign court, and therefore refused to recognosce upon the reasons of reduction.

Fol. Dic. v. I. p. 498. P. Falconer, No 90. p. 62.

No 131.
Acts and decrees of the Court of Justiciary cannot be reviewed by the Court of Session.